



Australian Government

Office of Parliamentary Counsel

Instruments Handbook

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About this Handbook

The purpose of this Handbook is to provide information to help Commonwealth rule-makers and agencies make and manage legislative and notifiable instruments efficiently, effectively and in accordance with the relevant law. It should be read in conjunction with the following documents, as available on the Legislation Register <https://www.legislation.gov.au>:

- (a) the *Legislation Act 2003* (the LA)
- (b) the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOMR)
- (c) the *Legislation Rule 2016*
- (d) the *Legal Services Directions 2017*.

Questions and comments about the current Handbook are welcome at any time and should be emailed to lodge@legislation.gov.au.

Abbreviation key

Abbreviation	Meaning
AGD	Attorney-General's Department
ExCo	Federal Executive Council
LA	the <i>Legislation Act 2003</i> , previously known as the <i>Legislative Instruments Act 2003</i> (the LIA)
LEOMR	the <i>Legislation (Exemptions and Other Matters) Regulation 2015</i>
OBPR	Office of Best Practice Regulation
OPC	<i>Office of Parliamentary Counsel</i> , an independent statutory authority accountable to the Attorney-General
Register	the Federal Register of Legislation
RIS	Regulation Impact Statement
Rule	the <i>Legislation Rule 2016</i>
s	section (or equivalent)
SSCRO	Senate Standing Committee on Regulations and Ordinances

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Part 1—Matters relevant to all instruments

Chapter 1—Introduction

Main points

- The *Legislation Act 2003* is an Act of general application. It establishes a comprehensive regime for the making, publication and review of legislation and related material.

Background

1 The *Legislation Act 2003* (the LA) underpins open and transparent government by making a large body of legislation and related material subject to publication and review.

2 Under Australia's Constitution, the Parliament can make laws in the form of Acts of the Parliament, or it can choose to delegate its power to make laws on particular matters to other persons and bodies¹.

3 For many years, related documents (*instruments*) had to be printed centrally under the *Statutory Rules Publication Act 1903*, or notified in the Commonwealth Gazette. Delegated laws including regulations and rules were also subject to disallowance by either House of the Parliament under the *Acts Interpretation Act 1901*.

4 Initially these arrangements worked well. However, as many new types of instruments began to emerge from the 1970s onwards, a significant body of law developed that was not published or subject to parliamentary scrutiny. Among other things, this meant that people could be held responsible for failure to comply with laws to which they did not have access.

5 These issues were highlighted by the Administrative Review Council in its 1992 report *Rule Making by Commonwealth Agencies*². In this report, the Council proposed that all delegated laws be:

- (a) subject to consultation before making; and
- (b) drafted to a certain standard; and
- (c) made public and accessible; and
- (d) tabled in the Parliament; and
- (e) subject to disallowance and sunseting.

6 The recommendations of the Administrative Review Council were largely adopted when the *Legislative Instruments Act 2003* was enacted.

¹ For guidance on which powers may be delegated, see the *Legislation Handbook*
<https://www.dpmc.gov.au/resource-centre/government/legislation-handbook>

² See <http://www.arc.ag.gov.au/Publications/Reports/Pages/Reportfiles/ReportNo35.aspx>

The Legislative Instruments Act 2003 (the LIA)

7 The *Legislative Instruments Act 2003* established a comprehensive regime for the management of Commonwealth legislative instruments, and what was then the Federal Register of Legislative Instruments (FRLI). The Act also:

- (a) created a concept of legislative instrument based on what an instrument did rather than what it was called; and
- (b) required the registration of all new legislative instruments made on or after 1 January 2005; and
- (c) repealed any older legislative instruments that were not lodged for registration before 1 January 2008, under what was known as backcapture.

8 As part of this, the Act required the online publication of every type of instrument that had previously been printed as a Statutory Rule, and of a much wider range of instruments that had not previously been required to be published systematically.

9 A formal review of the LIA conducted over 2008-09 found that it had “fundamentally changed the way in which Commonwealth legislative instruments are made, published and reviewed. It gives effect to important principles of access to the law and review of executive action which underpin open and accountable government.”³

10 The review also made a number of recommendations, including to amend the LIA to cover a wider range of instruments. Relevant legislation was enacted in stages, culminating in the commencement of the *Acts and Instruments (Framework Reform) Act 2015* and in the LIA becoming the *Legislation Act 2003* on 5 March 2016.

The Legislation Act 2003

11 The *Legislation Act 2003* establishes a comprehensive regime for the publication of all Commonwealth legislation and related notices. Of particular note is that:

- (a) it now extends to Commonwealth Acts, the publication of which was previously governed by a separate Act; and
- (b) it also establishes a new category of notifiable instrument, for notices of a legal nature that are not legislative but still of long-term public interest; and
- (c) it does not change existing requirements relating to the development and scrutiny of legislative instruments (e.g. disallowance and sunseting).

12 References in existing law to the LIA, to specific parts of the LIA and to FRLI should be updated in the interests of clearer laws but continue to have effect in the meantime. Under subitem 166(1) of Schedule 1 of the *Acts and Instruments (Framework Reform) Act 2015*:

³ For more information about the review process and recommendations, see <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

References to the *Legislative Instruments Act 2003*

Item	A reference to ...	is a reference to ...
1	the <i>Legislative Instruments Act 2003</i>	the <i>Legislation Act 2003</i> .
2	Part 5 of the <i>Legislative Instruments Act 2003</i>	Part 2 of Chapter 3 of the <i>Legislation Act 2003</i> .
3	Part 6 of the <i>Legislative Instruments Act 2003</i>	Part 4 of Chapter 3 of the <i>Legislation Act 2003</i> .
4	Any other provision of the <i>Legislative Instruments Act 2003</i>	the provision of the <i>Legislation Act 2003</i> that corresponds to the other provision (whether or not the provisions are identically numbered).

Sunsetting Review

13 In 2017, the LA was subject to a review of sunseting and related matters specified by the Attorney-General under section 60 of the [LA](#).

14 The *Report on the Operation of the Sunsetting Provisions in the Legislation Act 2003*, published in September 2017⁴, made a number of recommendations. Overall, the review supported the sunseting framework and recommended that the 10-year sunseting period be maintained.

15 Some of the other recommendations include that:

- (a) the Attorney-General be allowed to grant deferrals of sunseting for up to 24 months;
- (b) the sunseting framework not be extended to primary legislation;
- (c) automatic repeal of disallowable legislative instruments under Division 1 of Part 3 of Chapter 3 of the [LA](#) not operate before the end of the disallowance period; and
- (d) another review of sunseting provisions be undertaken by 1 October 2027.

Further statutory reviews

16 A review of all aspects of the operation of the Act and any related matters is required to be undertaken over 2021 under section 59 of the [LA](#).

⁴ See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/Review-of-the-sunsetting-framework-under-the-legislation-act-2003.aspx>

Chapter 2—Key concepts

Main points

- The [LA](#) imposes a number of obligations on rule-makers in respect of legislative instruments and notifiable instruments.
- For the purposes of the [LA](#), the **rule-maker** generally refers to the person or body (or a delegate) authorised to make an instrument under its enabling legislation.
- Declarations about whether or not a class of instrument is a legislative instrument or a notifiable instrument can be found in the [LA](#), [LEOMR](#) and some enabling legislation.
- In the absence of an express declaration, the definition of a **legislative instrument** in section 8 of the [LA](#) must be applied to an instrument.
- If it is unclear whether an instrument is a legislative instrument, it would be prudent to get legal advice and take action if necessary to put the issue beyond doubt.
- The Federal Register of Legislation is an authorised database of legislation and related material including instruments, their explanatory statements and compilations of instruments as amended.
- The Register is accessible online free of charge at <https://www.legislation.gov.au>.

Who is a rule-maker?

17 The [LA](#) imposes a number of obligations on rule-makers, including lodging instruments for registration, and notifying events that may affect the accuracy and completeness of the Register.

18 For the purposes of the [LA](#), **rule-maker** generally means the person or body authorised to make an instrument under its enabling legislation, whether or not the person or body actually made the instrument concerned ([LA](#) s 6(1)(c)). There is one exception to this rule. For instruments made by the Governor-General, the rule-maker is taken to be:

- (a) the Minister responsible for the enabling legislation under which the instrument is made ([LA](#) s 6(1)(a)); or
- (b) if the instrument is made under executive power—the Prime Minister, or a Minister prescribed by regulation ([LA](#) s 6(1)(b)).

19 A rule-maker may, in some circumstances, be able to delegate the power to make an instrument to a third party (see paragraphs 90 to 94). The delegation of power does not, however, affect the obligations of the rule-maker under the [LA](#).

20 Although rule-makers are responsible for ensuring that the requirements of the [LA](#) are met, agencies play an important role advising rule-makers on their powers and obligations, and taking care of administrative matters such as lodgement of instruments and other material for registration, preparation of compilations if required, and payment of associated fees.

What is an instrument?

21 An **instrument** means any writing or other document, and includes an instrument in electronic form (LA s 4). For the purposes of complying with the LA, there are three distinct types of instrument to consider:

- (a) **legislative instruments**, which are subject to additional requirements as outlined in Part 2 of this Handbook; and
- (b) **notifiable instruments**; and
- (c) other instruments that are not required to be registered.

22 To identify the type of instrument, it is necessary to look at the text of an instrument and see whether it commences, amends or repeals a registered law (see paragraph 24). For instruments that are stand-alone or **principal instruments**, it is necessary to establish whether an instrument:

- (a) has been declared to be a legislative instrument (paragraph 27); or
- (b) has been declared to be a notifiable instrument (paragraph 31); or
- (c) is subject to other criteria including, in some cases, whether the instrument is of legislative character (paragraphs 34 to 36).

23 It cannot be assumed that a legislative instrument is of legislative character. The fact that an instrument is a legislative instrument does not imply that it is or must be of legislative character (LA s 9(1)). The reverse is also true: the fact that an instrument is not a legislative instrument does not imply that it is not or must not be of legislative character (LA s 9(2)).

Instruments that commence, amend or repeal registered laws

24 An instrument must be lodged for registration if it commences, amends or repeals a registered instrument, Act or provision of such an instrument or Act (a **registered law**).

25 An instrument that has the sole effect of commencing a registered law (a **commencement instrument**) must in all cases be lodged for registration as a notifiable instrument (LA s 4 and 11(2)(a)). This also applies to any instrument that announces the day that an international agreement enters into force for Australia, regardless of whether the treaty itself is ever registered (LEOMR s 8 item 1).

26 An instrument that amends or repeals a registered law must also be lodged for registration. If it only affects notifiable instruments, it must be lodged as a notifiable instrument (LA s 11(2)(d)). Otherwise, unless the instrument's enabling Act specifies otherwise, it must be lodged as a legislative instrument (LA s 10(1)(d)).

Instruments declared to be legislative instruments

27 An instrument's enabling legislation may declare it to be a legislative instrument. Examples of provisions that do this are as follows (LA s 8(2)):

- (a) “The Minister may, by legislative instrument, determine licence conditions...”;
- (b) “An instrument made under ... is a legislative instrument”.

28 The [LA](#) also declares the following to be a legislative instrument:

- (a) an instrument described as a regulation by its enabling legislation ([LA](#) s 10(1)(a));
- (b) an instrument described as a Proclamation by its enabling legislation, unless it is a commencement instrument ([LA](#) s 10(1)(a) and 11(2));
- (c) an ordinance that deals with certain aspects of the governance of Australian Territories (for details see [LA](#) s 10(1)(b) and 10(2));
- (d) an instrument prescribed by regulation ([LA](#) s 10(1)(c), none at time of writing);
- (e) an instrument that includes a provision that amends or repeals another legislative instrument ([LA](#) s 10(1)(d));
- (f) any instrument that is registered as a legislative instrument, unless it is a notifiable instrument that meets certain criteria ([LA](#) s 8(8)).

29 Commonwealth rules of court are not legislative instruments ([LA](#) s 8(8)(d)). However, the enabling legislation for Commonwealth rules of court has the effect that the [LA](#) generally applies in relation to the rules of court as if a reference in the [LA](#) to a legislative instrument were a reference to a rule of court. This means that the rules of court are subject to most of the provisions of the [LA](#), including the provisions about registration, disallowance and sunseting.

30 If an instrument is declared to be a legislative instrument, no further action is required to establish its status under the [LA](#).

Instruments declared to be notifiable instruments

31 An instrument’s enabling legislation may declare it to be a notifiable instrument. Examples of provisions that do this are as follows ([LA](#) s 11(1)):

- (a) “The Minister may, by notifiable instrument, approve a form...”;
- (b) “An instrument made under ... is a notifiable instrument”.

32 The [LA](#) and [LEOMR](#) also declare the following to be a notifiable instrument:

- (a) a commencement instrument that commences a registered law ([LA](#) s 8(8)(b) and s 4);

- (b) an instrument that announces the day an international agreement enters into force for Australia, regardless of whether the treaty itself has been registered ([LEOMR](#) s 8 item 1).

33 If an instrument is declared to be a notifiable instrument, no further action is required to establish its status under the [LA](#).

Other instruments

34 Sometimes an instrument's enabling legislation will include a different kind of declaration to the effect that an instrument is not a legislative instrument, or is not a notifiable instrument. The [LA](#) and [LEOMR](#) also contain declarations that certain instruments are not legislative instruments as follows:

- (a) specific declarations for instruments made under a particular Act or provision of an Act ([LA](#) s 8(8) and [LEOMR](#) s 7);
- (b) generic declarations that apply to instruments made under a number of Acts unless the contrary intention appears ([LEOMR](#) s 6).

35 Please note, [LEOMR](#) does not apply if an Act (such as an instrument's enabling Act) declares that an instrument is a legislative instrument. An instrument's enabling Act should always be checked for declarations before [LEOMR](#), and lodging agencies are advised to take particular care when it comes to:

- (a) instruments of delegation and directions to delegates ([LEOMR](#) s 6 items 1 and 2); and
- (b) instruments of authorisation and approval ([LEOMR](#) s 6 items 4 and 5); and
- (c) instruments prescribing or approving forms ([LEOMR](#) s 6 item 6).

36 In the event that no declaration can be found in an Act or [LEOMR](#), the status of the instrument under the [LA](#) can only be established by looking closely at the individual instrument that has been or will be made and whether it is of legislative character. Subsection 8(4) of the [LA](#) specifies that an instrument is a legislative instrument if:

- (a) it is made under a power delegated by the Parliament; and
- (b) any provision of the instrument:
 - (i) determines the law or alters the content of the law, rather than whether or how it applies to particular cases or circumstances; and
 - (ii) has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

37 Even if an instrument is not a legislative instrument, it may still be useful to lodge it for registration as a notifiable instrument, especially if it is required to be published in the Gazette or elsewhere. Registering such an instrument as a notifiable instrument:

- (a) will generally satisfy any statutory requirement for the instrument to be gazetted or published (see [LA s 11\(4\)](#)); and
- (b) is much cheaper than alternatives such as newspaper advertising; and
- (c) ensures long-term access to your instrument (unlike agency websites where there is often pressure to archive older content and to change URLs for agency name changes and website redevelopment).

38 Unlike legislative instruments, notifiable instruments are not subject to tabling, disallowance or sunseting. However, they can still be repealed in bulk by means of a regulation made under section 48E of the [LA](#) if appropriate (see paragraph 198).

If there is uncertainty about the status of an instrument

39 It is important to identify instruments correctly: a legislative instrument is not enforceable by or against any person including the Commonwealth unless and until it is registered as a legislative instrument ([LA s 15K\(1\)](#)).

40 Lodging agencies, not OPC, are responsible for establishing the status of an instrument under the [LA](#) and for choosing the appropriate lodgement type at time of lodgement. Under section 15H of the [LA](#), if an instrument is lodged for registration:

- (a) as a legislative instrument, it must be registered as a legislative instrument ([LA s 15H\(1\)\(a\)](#)); or
- (b) as a notifiable instrument, it must be registered as a notifiable instrument ([LA s 15H\(1\)\(b\)](#)).

For new instruments

41 If it is unclear whether a particular instrument is a legislative instrument, it would be prudent to get legal advice and consider the potential risks to government policy if the instrument is, or is not, registered as a legislative instrument. If there is a need to put the issue beyond doubt, there are two options to consider as follows:

- (a) if the instrument does not need to be made urgently—there may be scope to include an express declaration in relevant legislation (generally [LEOMR](#)); or
- (b) if the instrument has already been made, or needs to be made urgently—it should be registered as a legislative instrument.

42 Registering an instrument as a legislative instrument generally results in it, and an instrument that amends or repeals it, becoming a legislative instrument ([LA s 8\(3\)](#)). However, this principle, and associated disallowance and sunseting regimes, does not apply to a notifiable instrument that is:

- (a) a commencement instrument ([LA](#) s 8(8)(b) and 11(2)); or
- (b) declared to be a notifiable instrument by its enabling legislation ([LA](#) s 8(8)(a) and 11(1)).

Note: If an instrument is declared to be a notifiable instrument by section 8 of [LEOMR](#) but it is registered as a legislative instrument, it will become a legislative instrument under subsection 8(3) of the [LA](#).

43 An express declaration that an instrument is not a legislative instrument can be inserted into [LEOMR](#) or an instrument's enabling legislation, but exceptional policy reasons will be required for a type of instrument that is likely to be of legislative character (see paragraph 36). Before making or instructing OPC to draft an exemption, please consult AGD (adminlaw@ag.gov.au or (02) 6141 2736). The formal policy approval of the responsible Minister and the Attorney-General is required for such a declaration.

For older instruments

44 Instruments that would be notifiable instruments if they were made on or after 5 March 2016 are not required to be lodged for registration. However, they can be registered if the First Parliamentary Counsel agrees that this is likely to be useful to users of the Register, for example, because instruments of ongoing or historic interest would cease to be available online as a result of machinery of government changes.

45 Legislative instruments made before 1 January 2005 were, however, required to be lodged by certain deadlines that have now passed. Any legislative instruments not lodged by the relevant deadline were, in almost all cases, repealed by the operation of section 32 of the [LA](#) when it was known as the LIA. That section has since been repealed, but its repeal does not affect:

- (a) the operation of a handful of older legislative instruments lodged later and registered under subsections 32(3) and 32(4) of the LIA; and
- (b) the repeal of all other legislative instruments not lodged as required.

What is the Federal Register of Legislation?

46 The Federal Register of Legislation is the authorised whole-of-government website for Commonwealth legislation and related documents. The Register contains the full text of laws, as well as details of the lifecycle of individual laws and the relationships between them. It is managed by OPC in accordance with section 15A of the [LA](#), and it includes:

- (a) all Acts as made since 1901; and
- (b) all legislative instruments made on or from 1 January 2005, including all older instruments in force on 1 January 2008, and associated explanatory statements; and
- (c) all notifiable instruments as made from 5 March 2016; and
- (d) compilations showing the text of Acts and instruments as amended; and

- (e) related documents such as Gazette notices, Bills and explanatory memorandums.

47 The authorised version of a document that has been registered is always in a PDF format and is always stamped with the document's unique identifier and a prescribed form of words such as "Authorised version" or "Authoritative" (for a complete list, see [Rule s 14](#)). Website pages for, and most links to, authorised documents are also marked with a distinctive "tick" logo.

48 For information on how and when to lodge instruments and related documents for registration, see [Chapter 4](#) of this Handbook. For information on how and when to lodge compilations, see [Chapter 5](#).

Chapter 3—Drafting and interpretation of instruments

Main points

- OPC is required to draft certain instruments, is available to assist with other drafting matters, and publishes detailed guidance on a range of drafting issues.
- In reading or drafting a legislative instrument, it is important to have regard to any special provisions in the enabling legislation that may apply in addition to, or instead of, the default rules provided by the [LA](#) on issues such as commencement, incorporation of documents by reference, and use of gender-specific language.
- Lack of attention to the default LA rules can have significant legal and other consequences.
- Attention to formatting issues is also important to ensure that registered documents meet government accessibility requirements and read as intended.

Drafting of legislative instruments

49 Under the [Legal Services Directions 2017](#), certain drafting work is tied to OPC. Agencies must use OPC's drafting services to prepare new or amending regulations, Ordinances and regulations of certain Territories, and any other legislative instruments made or approved by the Governor-General.

50 To better target OPC's drafting services to government needs, OPC has a prioritisation system for legislative instruments made or approved by the Governor-General (ExCo instruments). General policy approval from the Minister (or the Cabinet) for ExCo instruments is also required to be in place at the time drafting instructions are issued to OPC unless other arrangements have been made with OPC. More information is available on the OPC website⁵ or by contacting the [OPC instrument client adviser](#) for your agency.

51 Agencies that are developing legislative proposals for instruments required to be drafted by OPC but that lack the in-house expertise to answer key legal questions can also get quick, informal advice on drafting aspects of legislation proposals from their OPC instrument client adviser.

52 OPC is available to draft other instruments on a fee-for-service basis. OPC can also provide a range of support services for agencies drafting their own instruments including editorial, document design and compilation services on this basis. More information about OPC instrument drafting and support services is available on the OPC website <http://www.opc.gov.au/>.

53 If an instrument is not to be drafted by OPC, the person drafting the instrument needs to be aware of the drafting and publishing standards set out in this Chapter. Compliance with these standards is important and will help ensure that new instruments are:

⁵ See http://www.opc.gov.au/client_information/index.htm.

- (a) legally effective—there are a number of laws of general application to consider (see paragraphs 54 to 83); and
- (b) clear; and
- (c) intelligible to anticipated users, including people who may rely on assistive technology (see paragraph 103).

General principles for interpretation of instruments

54 Subject to a contrary intention in the enabling legislation, the [LA](#):

- (a) applies the [Acts Interpretation Act 1901](#) to a legislative instrument as if it were an Act and each provision were a section of an Act ([LA](#) s 13(1)(a)); and
- (b) gives expressions used in a legislative instrument the same meaning as in the enabling legislation as in force from time to time ([LA](#) s 13(1)(b)); and
- (c) requires a legislative instrument to be read subject to the enabling legislation as in force from time to time, and so as not to exceed the rule-maker's power ([LA](#) s 13(1)(c)); and
- (d) provides that, if the legislative instrument exceeds the rule-maker's power, the instrument is taken to be valid to the extent that it is within power ([LA](#) s 13(2)).

55 The [LA](#) also provides that a rule-maker, in exercising a power to make a legislative instrument in relation to a matter (including a thing, person or animal), may identify the matter by referring to a class or classes of matters ([LA](#) s 13(3)). A rule-maker may also:

- (a) specify when the instrument or a provision of the instrument commences (within the limits set out in [LA](#) s 12: see paragraph 63); and
- (b) prescribe matters by reference to another document (within the limits set out in [LA](#) s 14: see paragraph 86).

What should be included in an instrument

56 Appropriate Australian Government branding (e.g. the Commonwealth Coat of Arms or Australian Government logo) is important to ensure that an instrument is easily identifiable as an official document. The branding chosen should be consistent with relevant whole-of-government guidelines⁶.


⁶ See <https://www.dpmc.gov.au/resource-centre/government/legislation-handbook>

Recommended approach

57 In addition to Australian Government branding, an instrument should include the following (see also Illustration 3A):

- (a) the words making the instrument—these should reflect the language of the enabling Act;
- (b) the date of making;
- (c) the name as signed, and title, of each maker of the instrument.

Illustration 3A—generic official branding and making words⁷


[Title of instrument including year of making]

I, *[name of rule-maker]*, *[title of rule-maker]*, make the following instrument.

Dated *[date of making]*

[name of rule-maker]
[title of rule-maker]

58 The making words are usually followed by a page break, a table of contents unless the instrument is very short, and the main body of the instrument. The main body of the instrument should start with certain standard provisions, and these provisions should not be combined with the making words or with any other provisions. These standard provisions, and the recommended order of provisions, is as follows (see also Illustration 3B):

⁷ This is an example only and may not be appropriate in all situations.

- (a) **Name.** A naming provision should be included in all legislative instruments other than commencement instruments. The name given to an instrument should be convenient (not too long) and unique, so that the instrument can be identified with complete certainty from its name alone. For detailed guidance on the naming of instruments, please refer to [OPC Drafting Direction 1.1A](#). Note also that First Parliamentary Counsel may name or rename instruments if they do not have a name that is unique (see [LA s 15M\(b\)](#) and [Rule s 10](#)).
- (b) **Commencement.** A commencement provision is important to set out when the instrument will commence, even if the default commencement applying under the [LA](#) is to be used. For more information on commencement, see paragraphs 63 to 70.
- (c) **Authority.** An authority provision should be included in all legislative instruments other than commencement instruments, to identify the enabling legislation as defined in [LA s 4](#). The authority provision should cite the full name of each piece of enabling legislation, and also the enabling provision unless the instrument is made under a general instrument-making power.
- (d) **Definitions.** Any definitions should generally be presented together up front wherever possible. If an expression is already defined in an instrument's enabling legislation, it is useful to note this but the definition should not be duplicated. An expression used in an instrument will generally have the same meaning as in its enabling legislation: see [LA s 13\(1\)\(b\)](#).

59 Each provision in the main body of the instrument and in any Schedules should be referred to and numbered in an orderly way. This ensures that the provisions of an instrument can be referred to readily and amended with certainty, and compilations can be prepared of the instrument as amended (see [Chapter 5](#)). For consistency with the rest of the Commonwealth statute book, the person drafting the instrument should:

- (a) use Arabic numerals (e.g. 1, 2, 3) for all headings, sections and subsections; and
- (b) use letters (e.g. (a) and (b)) for paragraphs; and
- (c) if inserting a new section/s (e.g. after section 25), use capital letters after the numeral to indicate the sequence of sections (e.g. section 25A, 25B etc.); and
- (d) if many new sections have been/are to be inserted, skip the letters "I" and "O" after numerals to avoid confusion e.g. between 25I and 251, and 25O and 250; and
- (e) avoid using capitalised Roman numerals (e.g. I, II, III), unless inserting provisions into an existing instrument that already uses them; and
- (f) avoid "tidying up" legislation by renumbering it, without carefully considering the risks (especially if there are cross-references in related documents).

60 For detailed guidance on the numbering of provisions, and the risks involved in renumbering provisions, please refer to [OPC Drafting Direction 1.7](#).

Illustration 3B—standard order and format of provisions in main body of instrument

1 Name

This is the *[name of instrument including year of making, formatted in italics]*.

2 Commencement

This instrument commences on *[date of commencement, spelt out in full e.g. as 9 January or 1 September, not the potentially ambiguous 9/1]*.

3 Authority

This instrument is made under *[enabling provision unless a general instrument-making power is used]* of the *[full name of enabling legislation including year of making, formatted in italics unless there is no year of making]*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) *[first expression defined in Act]*; and
- (b) *[second expression defined in Act]*.

In this instrument:

Act means the *[full name of enabling legislation as in the authority provision. Note, this definition is only needed if there are repeated references to the Act]*.

new expression means the *[new expression defined in this instrument. Delete or insert definitions as appropriate]*.

5 *[Title of substantive section]*

[Text of section. If subsection is required, number and format these and any paragraphs as follows].

- (1) *[Detail of subsection 5(1)]*.
- (2) *[Detail of subsection 5(2)]*:
 - (a) *[Detail of paragraph 5(2)(a)]*; and
 - (b) *[Detail of paragraph 5(2)(b)]*.
- (3) *[Detail of subsection 5(3). Insert additional sections and delete or renumber provisions as appropriate]*.

Use of other approaches

61 The person drafting the instrument is sometimes asked to omit standard provisions or numbering, or to include images or other content that is not legally necessary. Although this approach may make an instrument “look nice”, it can also make it difficult to apply amendments and, in extreme cases, to enforce an instrument. Consequently, if a rule-maker

wishes to proceed with a non-standard approach, agencies are advised to ensure that the rule-maker:

- (a) is aware of the associated risks; and
- (b) includes non-standard content as an attachment or Schedule to a short instrument that follows the recommended approach.

62 Even a very short instrument should include the enabling legislation and making words appropriate to that legislation in the text of the instrument. These details are important to establish whether the instrument has been validly made.

Default rules on commencement of instrument or provision

63 In exercising the power to make a legislative instrument, the rule-maker should always specify when the instrument, or each provision of the instrument, commences. In doing so, the rule-maker must have regard to any special provisions in the instrument's enabling legislation, and the default provisions of the [LA](#) (particularly s 12).

64 An instrument may provide for its commencement by enabling a commencement instrument to be made: see [LA](#) s 12(5). Alternatively, an instrument or provision of an instrument may be expressed as commencing as follows:

- (a) on a specified day—if no time is specified, the commencement will occur at the start of the day under section 3 of the [Acts Interpretation Act 1901](#);
- (b) on a specified day and time—if a time is specified, it may be necessary to specify a time zone;
- (c) on or after a specified event such as:
 - (i) the instrument's registration; or
 - (ii) the commencement of a Commonwealth Act or provision of an Act; or
 - (iii) the commencement of a provision of a State law; or
 - (iv) the entering into force for Australia of a treaty—this would normally be notified through a notifiable instrument ([LEOMR](#) s 8 item 1).

65 Special care is needed if an instrument is to be expressed to commence retrospectively, that is, before the day that it is registered. Subject to any contrary provision in an Act, a provision of an instrument may commence retrospectively ([LA](#) s 12(3)). However, a provision that commences before the day that it is registered 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 ([LA](#) s 12(2)):

- (a) the person's rights as at that day 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 that day.

66 In addition, a legislative instrument is not enforceable unless and until it is registered as a legislative instrument ([LA](#) s 15K(1)).

67 Retrospectivity is an issue of concern to the Parliament (see [Chapter 9](#)), so if an instrument contains a retrospective provision, the instrument's explanatory statement should explain why retrospective commencement is appropriate and include an assurance that it is not affected by subsection 12(2) of the [LA](#). Additional assurances may be required for instruments to be made by the Governor-General—please refer to the Federal Executive Council Handbook for up-to-date information on current requirements⁸.

68 Special care is also needed if an instrument is being made under a provision of an Act that has received assent but that has not yet commenced. Such an instrument cannot commence before its enabling provision, and is usually expressed as commencing at the same time as the enabling provision commences (rather than on a particular date that might change). There are also limits on what such an instrument can do: see section 4 of the [Acts Interpretation Act 1901](#).

69 If there is no commencement provision, an instrument commences on the start of the day after it is registered ([LA](#) s 12(1)(a)). However, OPC's practice when drafting is to always specify when an instrument commences in a separate provision to ensure this is clear.

70 For further guidance and advice on commencement issues, please contact OPC, preferably before an instrument is made.

Default rules on amendment or repeal

71 The general consequences of amending or repealing a legislative instrument, or a provision of a legislative instrument, are set out in section 7 of the [Acts Interpretation Act 1901](#) as applied by paragraph 13(1)(a) of the [LA](#). Subject to a contrary intention in an instrument or Act, the amendment or repeal of an instrument does not, among other things:

- (a) revive an instrument or provision repealed by the first instrument or provision unless express provision is made for the revival; or
- (b) revive anything else not in force or existing when the repeal or amendment takes effect (unless express provision is and can be made for the revival); or
- (c) affect the previous operation of (including any amendment made by), or anything done under, the instrument or provision; or
- (d) affect any right, privilege, obligation or liability acquired, accrued or incurred under the instrument or provision; or
- (e) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the instrument or provision; or

⁸ See <https://www.dpmc.gov.au/resource-centre/government/federal-executive-council-handbook-2017>

- (f) affect any associated investigation, legal proceeding or remedy.

72 Under the [LA](#), amending an instrument generally triggers a requirement for one or more compilations to be prepared (see [Chapter 5](#) of this Handbook) but does not affect any sunset date that may apply to the instrument under Part 4 of Chapter 3 of the [LA](#) (see [Chapter 10](#) of this Handbook). Consequently, it may be better to remake (repeal and replace) an instrument if it is approaching its sunset date or if extensive changes are being made to the text of the instrument.

73 If an instrument is repealed, it is not removed from the Register. The instrument remains on permanent public record on the Register but is no longer displayed as in force. The [LA](#) makes no provision for registered instruments (or parts of registered instruments) to be removed from the Register for any reason.

Amending and repealing instruments

74 A rule-maker who is authorised to make a particular type of instrument may amend or repeal any instrument of the same type that is in force. However, the rule-maker must have regard to any special provisions in the instrument's enabling legislation and the default provisions of the [Acts Interpretation Act 1901](#) and the [LA](#). The rule-maker should also:

- (a) ensure that each instrument to be amended or repealed is clearly identified; and
- (b) consider whether a saving, transitional, application or self-repealing provision is needed (see also paragraphs 82 and 83); and
- (c) consider whether separate instruments are needed e.g. because only some of the instruments to be dealt with would normally be subject to disallowance.

75 To ensure that an amendment or repeal is effective and does not have unintended consequences, it is essential to clearly identify each instrument that is to be amended or repealed. Under paragraph 40(1A)(b) of the [Acts Interpretation Act 1901](#) (as applied by paragraph 13(1)(a) of the [LA](#)), a legislative instrument may be identified by one, or preferably both, of the following:

- (a) its name, if the instrument has a unique name equivalent to the short title of an Act;
- (b) its series number, if the instrument has a unique series number equivalent to the number given to Acts.

76 In the case of amendments, it is important to ensure that the provisions to be amended are clearly identified to ensure the amendments have effect and a compilation can be prepared that clearly indicates the history of amendments (see [Chapter 5](#)). Unless a specific practice is required by the enabling legislation, it is also important:

- (a) to clearly indicate that the relevant instrument is being amended, preferably by using the word “amend” for consistency with the [Acts Interpretation Act 1901](#) and the [LA](#); and

- (b) to avoid a potentially ambiguous term that may have other meanings such as modify, supersede, replace or reverse; and
- (c) to ensure that any provisions that are inserted are numbered appropriately—for further guidance on numbering and renumbering issues, see paragraph 59; and
- (d) to include any application, saving or transitional provisions relating to an amendment into the principal instrument by amendment.

77 It is OPC’s drafting practice to present amendments and partial repeals in one or more Schedules, and to number the Schedules so that even if there is only one Schedule, it is called “Schedule 1”. Further guidance on such matters is available in the OPC [Amending forms manual](#).

78 Amending an instrument does not change when it sunsets, so the date of amendment provided by the rule-maker cannot be later than any sunset date that already applies to an instrument under Part 4 of Chapter 3 of the [LA](#). If the sunset date is soon, there may be workload and other benefits in making a single replacement instrument that incorporates amendments. More information on sunseting issues is provided in [Chapter 10](#) of this Handbook.

79 In repealing an instrument in its entirety, the date of repeal provided by the rule-maker will have no effect if it is later than any sunset date that already applies under Part 4 of Chapter 3 of the [LA](#) (see [Chapter 10](#) of this Handbook). Unless a specific term is required by the enabling legislation, it is also important:

- (a) to clearly indicate that the relevant instrument is being repealed preferably by using the word “repeal” for consistency with section 7 of the [Acts Interpretation Act 1901](#) and the [LA](#); and
- (b) to avoid a potentially ambiguous term such as cease, end, finish, replace, sunset, supersede, terminate or expire as if repealed—these terms may cease the effect of a law without removing it from the statute book.

Certain instruments will be subject to automatic repeal

80 If an instrument is solely commencing, amending or repealing, it will be repealed automatically as soon as it is registered and commences in full under section 48A or 48B of the [LA](#). There is no need to provide for its repeal.

81 Agencies do, however, need to assess whether an instrument meets the [LA](#) criteria for automatic repeal, and advise OPC of this (ideally at time of lodgement). Note that the following do not affect whether an instrument is solely commencing, amending or repealing:

- (a) a preamble or recital (however described);
- (b) a naming provision;
- (c) a commencement provision;
- (d) an authority provision;

- (e) an objects provision, simplified outline or similar provision that sets out the purposes of, or explains, the instrument or any of its provisions;
- (f) any provision that is being inserted into another instrument by amendment.

82 An instrument cannot be considered solely commencing, amending or repealing if it contains any of the following provisions, unless the provision is inserted into another instrument by amendment:

- (a) a saving provision such as “Parts X and Y of the *Cat and Dog Regulation 2016* continue to apply in relation to ...”;
- (b) a transitional provision such as “If a person has lodged a claim before the commencement of the instrument ... the claim is taken to have been ...”;
- (c) an application provision such as “The amendments made by Schedule X apply / do not apply / only apply ...”;
- (d) a modification provision such as “The formula in section 99 is modified by ...” (this may need to be read in the context of an application provision);
- (e) any other substantive provision such as a requirement to notify or gazette certain information.

83 If an amending or repealing instrument contains a provision of the type identified in paragraph 82, it can still be repealed. In particular, if amendments are being made, it may be possible to insert all substantive provisions into the instrument being amended, in which case the instrument of amendment will be considered solely amending and subject to automatic repeal. Otherwise, a self-repealing provision should be considered (see paragraph 84).

Use of self-repealing provisions

84 Unless an instrument is subject to automatic repeal, it will remain in force until it is repealed by some other means. If an instrument is only likely to be needed for a particular event or a limited period such as a financial or calendar year, a self-repealing provision may be considered. In drafting such a provision, OPC’s current practice is:

- (a) to include a separate self-repealing provision under a heading such as “Repeal”; and
- (b) to provide that the instrument is repealed; and
- (c) to specify that the instrument is repealed at the start of a specified day, with the day chosen taking into account not only any sunset date that may apply, but also the need for the instrument:
 - (i) to be registered and to commence in full before it is repealed; and
 - (ii) to remain in force until the event or period to which it relates has passed.

Default rules on incorporating documents by reference

85 In exercising the power to make a legislative instrument in relation to a matter, a rule-maker may prescribe matters by reference to another document, such as model legislation enacted by another jurisdiction. In doing so, the rule-maker must comply with the default provisions of the [LA](#) (particularly section 14), and any special provisions of the instrument's enabling legislation.

86 Under section 14 of the [LA](#), a legislative instrument may apply, adopt or incorporate some or all of another document, with or without modification. The document may be applied, adopted or incorporated as it is in force or existing when the instrument commences. Future versions of the document can only be applied, adopted or incorporated if:

- (a) the document is a Commonwealth Act or disallowable legislative instrument; or
- (b) incorporation by reference from time to time is authorised by the enabling legislation.

87 To ensure that an incorporation by reference is effective, does not have unintended consequences, and is clear on the face of the instrument, it is essential to clearly identify the document that is incorporated and, if the document is not a Commonwealth Act or disallowable legislative instrument, to specify whether it is incorporated “as in force from time to time” or as in force at a stated time.

88 As it is usually necessary to refer to the document to understand or apply the law made by the instrument, the [LA](#) requires the rule-maker:

- (a) to describe the document, and indicate how it may be obtained, in the explanatory statement (see [LA](#) s 15J(2)(c) and [Chapter 8](#) of this Handbook); and
- (b) to make the document available for inspection, if and as required by either House of the Parliament, while the instrument is open to disallowance (see [LA](#) s 41 and [Chapter 9](#) of this Handbook).

89 Although agencies are not required to make documents incorporated by reference available elsewhere, the practice of incorporating documents that are not readily available “may increase the cost of compliance for the community and the risk of non-compliance”⁹. If it is necessary to incorporate such material, it may be possible to reduce the costs and risks e.g. by purchasing print copies for distribution to major regional libraries through the Commonwealth Library Deposit and Free Issue Schemes¹⁰.

Scope to delegate power

90 A rule-maker may, in some circumstances, be able to delegate to a third party the power to make instruments or exercise other powers. It is important to note, however, that

⁹ See [2008 Review of the Legislation Act 2003](#), chapter 4.4.

¹⁰ See <http://www.finance.gov.au/librarydeposit>

delegation is usually only possible if an Act makes explicit provision for it to occur. Examples of provisions that do this include the following:

“The Minister may, in writing, delegate his or her powers under this Act to an SES employee or an APS employee performing duties in the Department.”

“The First Parliamentary Counsel may, by signed instrument, delegate to ... an SES employee in the Office of Parliamentary Counsel or in the Department any of the powers or functions of the First Parliamentary Counsel under this Act.”

91 It is also important to note that delegating a power does not expand the statutory limits of that power, affect any obligations that may apply under Acts of general application including the [LA](#), or mean that the delegate can sub-delegate the power further (see [Acts Interpretation Act 1901](#) s 34AB(1)(b)). In addition, the delegator:

- (a) will need to make a formal instrument of delegation specifying who can exercise the power being delegated; and
- (b) may identify delegates by job title, by management level, by position number or by name (noting that doing so by name may necessitate regular updates); and
- (c) may wish to issue directions to delegates that apply in addition to the general obligations imposed by legislation including the [LA](#); and
- (d) should review the instrument of delegation and any directions to delegates on a regular basis, to ensure that they remain appropriate and up-to-date.

92 Instruments of delegation and any instructions issued to delegates are not normally required to be registered ([LEOMR](#) s 6 item 1) but are crucial to the legitimacy of any action taken in reliance on them. Consequently:

- (a) agencies should maintain detailed records of their documents, including those that have been superseded; and
- (b) delegates should review their documents on a regular basis to ensure that they are acting lawfully.

93 Special care is needed when a legislative instrument contains a delegation of power. The delegation must be within the scope permitted by the legislative framework and related case law. Specialist drafting assistance is recommended if the proposed delegation involves:

- (a) a delegate who is outside the agency; or
- (b) sub-delegation of the power to make an instrument that is, or is likely to be, a legislative instrument (see paragraph 36).

94 Sub-delegation of power has also been identified as an issue of concern to the Parliament (see [Chapter 9](#)) and is only acceptable if an instrument’s enabling legislation provides for this. Accordingly, if a legislative instrument provides for sub-delegation of power:

- (a) the instrument's explanatory statement should provide the authority for the sub-delegation, and describe the training, monitoring or other strategies being put in place to ensure that the sub-delegation is exercised with appropriate skill and care; and
- (b) if a legislative instrument is made by a delegate, the instrument's explanatory statement should describe how and when the power to make it was delegated to the rule-maker, and include an assurance and details of compliance with any directions to delegates that may apply.

Offences, infringement notices and enforcement powers

95 If the Parliament has delegated the power to make an instrument prescribing criminal offences or infringement and enforcement provisions, care needs to be taken to ensure that the provisions are legally enforceable and consistent with Australian Government policy.

96 Before seeking policy approval for such a provision, agencies should assess whether the proposal is consistent with the AGD *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*¹¹. Agencies should contact AGD's Criminal Law and Law Enforcement Branch on (02) 6141 2802 if the proposal:

- (a) contains novel or complex issues that the Guide does not address; or
- (b) departs significantly from the principles in the Guide.

97 Further guidance on related matters can be found in [OPC Drafting Direction 3.5](#).

Gender-specific and gender-neutral language

98 In exercising the power to make a legislative instrument in relation to a matter, it is generally important to use gender-neutral language. Language that might be reasonably seen to imply a single gender should be avoided, unless:

- (a) the instrument is intended to apply only to people of one sex; or
- (b) it is important to use a particular term for consistency with the enabling legislation.

99 Inappropriate use of gender-specific language is clearly identified in the [LA](#) as undesirable. Under section 16 of the [LA](#), the First Parliamentary Counsel is required to take steps to prevent the inappropriate use of gender-specific language in legislative instruments, and to notify both the rule-maker and the Parliament of any instances that may be identified.

100 Further guidance on what constitutes gender-specific and gender-neutral language can be found in [OPC Drafting Direction 2.1](#).

¹¹See <http://www.ag.gov.au/Publications/Pages/GuidetoFramingCommonwealthOffencesInfringementNoticesandEnforcementPowers.aspx>

Other content issues

101 When it comes to the content of an instrument and related documents, rule-makers need to exercise care and judgement in deciding what level of detail to include. For example, it may not be necessary or appropriate to disclose:

- (a) information that would normally be assigned a security classification or a dissemination limiting marker (DLM) such as “Sensitive” or “For Official Use Only”¹²; or
- (b) information such as a person’s home address—this may breach the [Privacy Act 1988](#) and raise safety issues, although it may still be desirable to find some other way to identify a person unambiguously so as to minimise unintended consequences for other people with the same name.

102 A copyright notice should only be included in an instrument or related document if this is essential to acknowledge the intellectual property (IP) rights of a third party, and if the legal and other implications of reusing this IP has been carefully considered. For more information on copyright of registered content, see paragraph 192.

Technical considerations

103 Given their legal nature, it is essential that all registered documents are accessible to the widest range of users, including people who may rely on assistive technology such as screen readers. This is a requirement of the [Disability Discrimination Act 1992](#)—see section 29 of that Act in particular on the administration of Commonwealth laws and programs.

104 The Register website is generally compliant with the international standard for accessibility, namely the Web Content Accessibility Guidelines (WCAG) 2.0¹³. However, agency software and other choices can have a major impact on the accessibility of individual documents.

105 To ensure that documents are searchable and can be read by a wide range of devices, all documents must be supplied to OPC in Microsoft Word or rich text format, unless the First Parliamentary Counsel has agreed otherwise ([Rule s 5\(3\)](#)). This ensures documents can be indexed and offered to users in a choice of file formats. For more information on current formats, see <https://www.legislation.gov.au/Content/Disclaimer>.

106 Meeting these requirements is important but may not, on its own, ensure that text and other content is fully machine and people-readable. Agencies should, therefore:

- (a) format the text of documents using styles or equivalent; and
- (b) choose an easily readable font and font size for normal text—OPC’s current practice is to use 11 point Times New Roman for most text; and
- (c) present mathematical formulas as images; and

¹² See <http://www.protectivesecurity.gov.au/informationsecurity/Pages/default.aspx>

¹³ See <http://www.w3.org/WAI/>

- (d) ensure all images are legible, and are tagged with an “alt text” description for people who use screen-readers; and
- (e) preview what the document is likely to look like when converted into PDF or HTML format (for example, by using the “Save As” feature in Word); and
- (f) consider splitting very large files that exceed 10MB or 600 pages into multiple volumes to avoid excessive download times; and
- (g) finalise the document only after checking for hidden issues—in Word 2010, for example, this can be done using the File | Info | Check for Issues toolset.

107 Things that are likely to cause problems, and that should be avoided if practicable, include the following:

- (a) hidden content such as revisions and comments that may not be intended or suitable for publication;
- (b) field codes and macros—these may no longer work, or may not work in the way intended, when the document is published by OPC;
- (c) special symbols—the Greek letter “Mu” (μ) in particular is at risk of being misread by some devices/software so μg may be misread as mg;
- (d) highlighting, watermarks or background images that may obscure the text.

108 Finally, agencies should also ensure that at least 1cm is left blank at the bottom of each page. This is so that no content is obscured when the document is stamped with its unique identifier and, if applicable, the words that indicate that it is an authorised version (see [Rule s 11 and 14\(2\)](#)).

109 If significant technical issues are identified during or after the registration process, OPC will generally contact the lodging agency to discuss the situation and suggest what can be done to resolve it.

Improving drafting standards

110 Section 16 of the [LA](#) requires the First Parliamentary Counsel to cause steps to be taken to promote the legal effectiveness, clarity, and intelligibility to anticipated users, of legislative instruments. The steps may include, but are not limited to, the following:

- (a) undertaking or supervising the drafting of legislative instruments;
- (b) scrutinising preliminary drafts of legislative instruments;
- (c) providing advice about the drafting of legislative instruments;
- (d) providing training in drafting and drafting-related matters to agencies;
- (e) arranging the temporary secondment of OPC staff to agencies;

- (f) providing drafting precedents to agencies.

111 This Handbook, issued by the First Parliamentary Counsel, includes important information to assist agencies to improve drafting standards. OPC has been revising its drafting directions to deal comprehensively with the drafting of instruments as well as Bills. Many OPC [Drafting Directions](#) have already been issued or revised to deal with the drafting of instruments. OPC is also available on a fee-for-service basis to provide training to agency staff who prepare legislative instruments. For further information, please contact the [OPC instrument client adviser](#) for your agency.

Chapter 4—Lodgement and registration of instruments

Main points

- An instrument must be lodged for registration as soon as practicable after making, preferably with its explanatory statement if required.
- Registration is not the end of the process—both agencies and OPC are required to take action to ensure that the Register remains complete and accurate.

Requirement to lodge instruments with OPC

112 All instruments must be lodged for registration as soon as practicable after making (LA s 15G). However, it is possible to create a lodgement before an instrument is made and this is recommended for instruments that are time-critical or that are likely to be of public interest, such as regulations or other legislative instruments made or approved by the Governor-General at a meeting of the Federal Executive Council (ExCo).

113 The steps involved in lodging an instrument for registration are as follows:

- (a) create an online lodgement;
- (b) attach the electronic version of the instrument or, for ExCo instruments, provide the OPC matter number;
- (c) if required—attach the explanatory statement or other documents;
- (d) certify the online lodgement—this is the final step before OPC can register an instrument, and should only be taken once an instrument has been made.

114 Agencies do not need to lodge original instruments in hard copy, as electronic copies of registered laws and explanatory statements are authorised and taken to be a reliable source of information for the purpose of legal proceedings (LA s 15ZB). Agencies are, however, expected to manage hard copies in accordance with the *Archives Act 1983* and related guidance on the destruction of original records after digitisation (GRA31).

115 Failure to lodge instruments promptly can have significant legal and other consequences, particularly if this results in the instrument commencing retrospectively (see paragraphs 65 and 66).

Step 1: Create online lodgement

116 A separate online lodgement must be created for every instrument. This can only be done through the secure lodgement facility at <https://lodge.legislation.gov.au> unless the First Parliamentary Counsel has agreed otherwise (Rule s 5(2)).

117 Many agencies have a central lodging area for lodgement purposes. If not, please contact OPC (lodge@legislation.gov.au or (02) 6120 1350) to arrange a log-on and

assistance. The lodgement facility also features help within lodgement forms to make the process as easy as possible.

118 As part of the lodgement process, the lodging agency will need to choose the appropriate lodgement type (that is, legislative instrument or notifiable instrument as discussed in [Chapter 2](#)) and supply information including:

- (a) the name and relevant provision of the instrument's enabling legislation; and
- (b) a brief description of the subject matter of the instrument; and
- (c) a reference identifying any document incorporated by reference in the instrument; and
- (d) the name of the instrument and of any instrument that it affects; and
- (e) the number of pages in the instrument; and
- (f) the name and contact details of a person who can answer questions about the instrument; and
- (g) details of any special requirement e.g. for registration on or before a specified date, or for express or peak period service as discussed in paragraph 136.

119 Please ensure that the person nominated to answer questions about the instrument is familiar with the instrument in question, and provide their mobile or after-hours phone number if express registration is required. Otherwise, if statutory requirements have not been met, it may not be possible for OPC to meet the requirement for express registration.

120 In addition, to ensure that the instrument is processed appropriately after registration, information must also be provided about:

- (a) whether the instrument is subject to automatic repeal as discussed in paragraphs 80 to 83; and
- (b) if it is a legislative instrument—whether it is subject to:
 - (i) disallowance as discussed in [Chapter 9](#); and
 - (ii) sunseting as discussed in [Chapter 10](#).

Step 2: Attach electronic version of instrument or provide OPC matter number

121 If the instrument has been drafted by OPC, please provide the OPC matter number (stamped in the footer of draft instruments). OPC will then locate the draft instrument, insert important details such as the date of making and advise when the lodgement is ready for the agency to complete and certify.

122 For all other instruments, attach (upload) an electronic copy of the instrument as made to the online lodgement form. The electronic file:

- (a) must be in .rtf, .doc or .docx format unless the First Parliamentary Counsel has agreed to some other format (see [Rule s 5\(3\)](#)); and
- (b) must not contain macros, fields or other dynamic content that may interfere with the content of the document (see [Rule s 5\(4\)](#)).

Step 3: If required—attach explanatory statement or other documents

123 The explanatory statement and any supporting material for the instrument should also be attached (uploaded) to the online lodgement form. As with instruments, these documents:

- (a) must be in .rtf, .doc or .docx format unless the First Parliamentary Counsel has agreed to some other format (see [Rule s 5\(3\)](#)); and
- (b) must not contain macros, fields or other dynamic content that may interfere with the content of the document (see [Rule s 5\(4\)](#)).

124 The Register may contain additional documents if First Parliamentary Counsel considers that the documents are likely to be useful to users of the Register (see [LA s 15A \(3\)](#)). Any supporting material should be appropriate to publish and likely to be useful to users of the Register. Administrative documents such as briefs to Ministers are not appropriate to be included as supporting material.

125 If the explanatory statement is not yet available, details of when the explanatory statement is likely to be available should be noted in the special requirements field.

Step 4: Certify the online lodgement

126 All lodgements must be certified as complete and accurate by the lodging agency (not OPC) in order for any processing of the lodgement to start.

127 As part of certifying a lodgement, the agency should check the lodgement and all attachments carefully against the original documents. It is particularly important to check the electronic form of the instrument against the instrument as made—they must be identical in all respects. As part of this:

- (a) any editing notations including change tracking and “DRAFT” or “COPY” marks must have been removed unless they appear in the signed original; and
- (b) the following must be included in the electronic copy:
 - (i) anything written by the rule-maker on the original instrument;
 - (ii) anything written on the original instrument by someone else before the rule-maker signed the instrument;
 - (iii) any date given in the signed instrument as the date of making;
 - (iv) the name as signed of each maker of the instrument and each other person who signed the instrument as made (e.g. a person who witnessed the rule-maker’s signature).

128 It is generally not necessary for the electronic form of the instrument to include a scan of the rule-maker’s signature or the notation “signed”. However, it should be clear from the text that the instrument has in fact been signed, so the presumption of regularity can apply.

129 It is important to take the certification requirement seriously, and to check each document attached to a submission. Submitting incorrect information may be a breach of the APS Code of Conduct¹⁴, and can have serious consequences for an agency and for government policy (see paragraphs 186 to 189).

130 If it emerges that a lodgement is incomplete or inaccurate, it must be withdrawn as soon as practicable ([Rule s 6\(3\)](#)). If that is no longer possible, then the error must be notified to OPC without delay ([LA s 15L\(1\)\(e\)](#)). For further guidance on how to report events affecting the accuracy and completeness of the Register, see [Chapter 6](#) of this Handbook.

Standard timeframes for registration

131 Two full working days after certification should generally be allowed for standard pre-registration processes and another three working days for OPC to lodge documents for tabling during sitting periods. A longer lead time is recommended if documents:

- (a) are lodged in a non-standard format—please note this requires the prior approval of the First Parliamentary Counsel ([Rule s 5\(3\)](#)); or
- (b) do not have a name or a unique name—First Parliamentary Counsel may name or rename instruments if they do not have a name that is unique (see [LA s 15M\(b\)](#) and [Rule s 10](#)); or
- (c) are large, or contain a mathematical formula, a long table or other complex formatting; or
- (d) need special handling—requirements such as colour printing should be clearly flagged no later than the time of lodgement; or
- (e) need to be registered during peak periods notified in advance—additional fees may also apply (see paragraph 136).

132 As soon as an instrument is registered and available on the Register website, an email notification will be sent to the address nominated in the lodgement. If registration is likely to be delayed significantly, OPC will ring the lodging agency to discuss the matter. Please note, it may not be possible to register an instrument:

- (a) because statutory requirements have not been met; or
- (b) because of technical difficulties.

133 If technical difficulties prevent OPC from registering a document on the approved website <https://www.legislation.gov.au>, and as permitted by section 12 of the [Rule](#), OPC:

¹⁴ See section 13 of the [Public Service Act 1999](#).

- (a) may register the document by publishing it on the OPC website <http://www.opc.gov.au> or (if that website is not publicly available) by publicly displaying the document at 28 Sydney Avenue, Forrest ACT; and
- (b) will make the document available on the approved website once the technical difficulties have been resolved.

Fees for standard and additional services

134 OPC introduced an annual fee for standard registration services in 2014-15, because clients found it hard to budget for fees under the old “pay as you go” fee model. The “pay as you go” fee model also involved substantial administrative costs for both OPC and clients.

135 Feedback from clients has shown a strong preference for the new fee model, where clients receive a single annual invoice for each coming financial year, instead of many separate invoices over the course of a year. This fee model enables OPC to provide certainty to clients and, because it is simple to administer, to keep Register costs down.

136 OPC only charges additional fees if the client requires express service, or service in peak periods notified in advance. If your agency is likely to require such service, please let OPC know by calling (02) 6120 1350 during business hours. This is particularly important if you think your agency may require something to be registered:

- (a) on the day of or day after lodgement; or
- (b) outside of normal business hours, including on a weekend or public holiday.

137 The services OPC provides in connection with documents do not end with their registration. For example, OPC routinely tracks and alerts agencies to disallowance, sunseting and other legislative processes that may affect the lifecycle of an instrument and, even if an instrument is repealed, it remains available on the Register.

138 More information on fees can be obtained from the [lodgement facility](#) or the Register Help Desk on (02) 6120 1350.

Requirement for gazettal or notification in addition to registration

139 A legislative instrument’s enabling legislation may require the instrument to be published or notified in the Gazette. Under subsection 56(1) of the [LA](#), registering an instrument on the Federal Register of Legislation as a legislative instrument on or after 5 March 2016 meets the legislation’s requirement for gazettal. Generally, any requirements for publication of the instrument other than in the Gazette or generally on a website (such as in a newspaper or elsewhere) are additional to the requirement for registration on the Register (see [LA](#) subsections 56(2) and (3)). (A requirement for an instrument to be published on a website would be met by registering an instrument as a legislative instrument on the Federal Register of Legislation as the Register is a website.)

140 Similarly, a requirement may exist in the enabling legislation for an instrument other than a legislative instrument to be notified or published in the Gazette. Generally, under subsection 11(4) of the [LA](#), registering an instrument on the Federal Register of Legislation as a notifiable instrument on or after 5 March 2016 meets the legislation’s requirement for

gazettal (whether or not the enabling legislation refers to the instrument as a notifiable instrument). In addition, any other requirements for publication of the instrument are also met by the requirement for registration on the Register (see [LA](#) subsection 11(4)) unless the legislation provides a contrary intention.

141 Agencies should update their legislation to align with the [LA](#)¹⁵, and should avoid putting in place additional requirements for publication as well as registration, unless there are compelling reasons for these. Adopting the [LA](#) standard does not prevent an instrument being notified or published elsewhere if desired.

If an instrument is to be notified/published in addition to registration

142 If an instrument that has been or will be registered is to be notified or published elsewhere, care needs to be taken to ensure that:

- (a) what is published elsewhere is identical to what is lodged for registration (see also paragraphs 193 and 194); and
- (b) unless an instrument is made by the act of gazettal—the instrument is registered before it is published elsewhere, consistent with Parliamentary expectations about the prompt lodgement and registration of instruments.

143 If an instrument is to be notified or published in the Gazette, it may be appropriate to do so in one of the specialist gazettes published by individual Australian Government agencies. Otherwise, details should be lodged with OPC for gazettal in the general Government Notices Gazette. As part of lodging a notice with OPC, agencies will need to:

- (a) submit two different lodgements (an instrument and a gazette notice); and
- (b) ensure that the requirement for gazettal in addition to registration is explicitly flagged on both lodgement forms; and
- (c) if applicable, flag any special requirement for gazettal and registration to take place on the same day (and again, this should be noted on both forms).

¹⁵ The 2008 Review of the LIA explicitly recommended that agencies consider aligning all additional publication requirements with the LIA (now the LA) unless there are compelling reasons why that should not be done (see [2008 Review of the Legislation Act 2003](#), recommendation 19).

Chapter 5—Compilations

Main points

- Compilations are an important resource for agency staff and other users of legislation.
- As a general rule, a new compilation must be registered within 28 days of amendments to the text commencing or of other required compilation events.
- A compilation may also need to be prepared and lodged for other discretionary compilation events as notified by OPC.
- Agencies are responsible for preparing compilations of some instruments, but can make arrangements for OPC to prepare them on a fee-for-service basis.
- Care and skill is required to ensure that compilations are complete, accurate, and meet the requirements of the [LA](#).
- Future law compilations can be published on the Register if required.

General

144 Compilations showing the full text of a law as in force from time to time are an important resource for agency staff and everyone else wanting to understand and comply with the law. If a compilation is not available, people needing to know what the law says and how it has changed have to work this out for themselves—a time-consuming and complex process, particularly if the law has been amended many times.

When to prepare compilations

145 A compilation is required to be prepared and lodged whenever a required compilation event occurs. A **required compilation event** (that is, an event that requires a new compilation) occurs whenever:

- (a) an instrument is expressly amended, unless this is by the automatic repeal provisions of section 48C or 48D of the [LA](#) ([LA](#) s 15Q(1)(a)); or
- (b) disallowance results in the repeal of a provision of the principal legislative instrument, of an amending instrument or amending provision ([LA](#) s 15Q(1)(b)); or
- (c) a provision of the instrument is repealed, lapses, expires or otherwise ceases to be in force as a result of the operation of legislation ([LA](#) s 15Q(1)(c)); or
- (d) something else happens that is prescribed by the rules ([LA](#) s 15Q(1)(d)).

146 If a required compilation event occurs, the rule-maker must prepare and lodge a compilation within 28 days of the event, unless the First Parliamentary Counsel has agreed to

a longer period (LA s 15R(3)) or has made a rule waiving this requirement (e.g. because the compilation will be prepared by OPC rather than the rule-maker, see Rule s 8).

147 The First Parliamentary Counsel may also prepare, or issue a notice requiring a rule-maker to prepare, compilations to reflect the impact of other events known as discretionary compilation events. A **discretionary compilation event** occurs when:

- (a) a provision of an instrument commences (LA s 15Q(2)(a)); or
- (b) solely commencing, amending or repealing provisions are repealed under section 48C or 48D of the LA (LA s 15Q(2)(b)); or
- (c) an instrument is modified (LA s 15Q(2)(c)); or
- (d) an instrument is impliedly amended (for example, by a provision stating that a reference to a law by its old name should be construed as a reference to its new name without details of where the reference is to be found) (LA s 15Q(2)(d)); or
- (e) a provision of an instrument ceases to be in force under another provision of that instrument (LA s 15Q(2)(e)); or
- (f) the text of the instrument as made or of the latest registered compilation ceases to show the text of the instrument as in force (LA s 15Q(2)(f) and (g)); or
- (g) something else happens that is prescribed by the rules (LA s 15Q(2)(h), none at time of writing).

148 Compilations are required to be prepared on a “point-in-time” basis. A compilation of an instrument should be available for each date at which the text of the instrument is different. This enables a reader to readily work out the state of the law represented by the instrument at every point-in-time that the instrument is in force.

149 Thus, multiple compilations will normally be required if amendments commence on different dates. To illustrate, if amendments of an instrument commence on two different dates, two compilations will be required and it does not matter whether the amendments were made by one amending instrument or 20 amending instruments. Similarly, if an amendment of an instrument has commenced but is then disallowed:

- (a) a compilation showing the effect of the amendment before disallowance will be required; and
- (b) another compilation will be required to show the effect of disallowance on the text of the instrument.

If amendments to an instrument have not taken effect

150 A **future law compilation** is a compilation that incorporates expected amendments to the text of the law in force. Future law compilations can be a useful tool for agency staff and external stakeholders, particularly if major amendments have been made but have not yet commenced.

151 As the law may change before the expected amendments commence, and to avoid any confusion in the future, these compilations should always be clearly identified as future law compilations.

152 Although a future law compilation will not be authorised, OPC can prepare a future law compilation for the relevant agency and can make it available on the Register website until relevant amendments commence. For more information on the options and associated fees, please contact OPC (lodge@legislation.gov.au or (02) 6120 1350).

Who can prepare compilations

153 OPC prepares compilations for all Acts and for instruments that must be drafted by OPC. For more information on OPC's tied work, see paragraph 49 of this Handbook. OPC is also available to prepare compilations of other instruments for agencies on a fee-for-service basis. For more information about OPC's compilation services and fees, please contact OPC (lodge@legislation.gov.au or (02) 6120 1350).

154 Agencies that choose to prepare their own compilations of instruments that are not required to be drafted by OPC should note that they, and not OPC, are responsible for ensuring that their compilations are complete and accurate. This requires attention to the following things:

- (a) the minimum content requirements of the [LA](#)—OPC does basic checks and will reject compilations that clearly do not meet the [LA](#) requirements; and
- (b) the text of the instrument as amended and in force from time to time—this is not routinely checked by OPC.

155 An agency should act promptly if it is notified that a compilation is required for a discretionary compilation event, or has become overdue for a required compilation event. Please contact OPC (lodge@legislation.gov.au or (02) 6120 1350) if your agency is experiencing difficulties meeting associated deadlines. Otherwise, OPC may prepare the compilation on the agency's behalf and charge the agency for this service.

What must be included in compilations

156 Preparing a compilation requires attention to detail, technical skill with word processing tools and a good understanding of legislative practices. Compilations:

- (a) must be in .rtf, .doc or .docx format unless the First Parliamentary Counsel has agreed to another format (see [Rule](#) s 5(3)); and
- (b) must not contain dynamic content that may interfere with the content of the document, such as macros and many fields (see [Rule](#) s 5(4)).

Note: An automatically generated table of contents is acceptable and desirable unless a document is very short.

157 A compilation must also contain certain minimum information as prescribed in section 15P of the [LA](#) and section 7 of the [Rule](#). This information includes:

- (a) the **compilation date**, that is, the date from which the text of the instrument shown in the compilation applies ([LA](#) s 15P(1)(a));


- (b) if the compilation was prepared by OPC and incorporates editorial changes—a statement and brief outline of the editorial changes that have been made ([LA s 15P\(1\)\(b\)](#));
- (c) commencement and other details of any Act or instrument that amends the principal instrument ([LA s 15P\(1\)\(c\)](#));
- (d) the amendment history of each provision of the principal instrument as amended ([LA s 15P\(1\)\(d\)](#));
- (e) the name of the principal instrument ([Rule s 7\(a\)](#));
- (f) the **compilation number**—this is essentially a version number and is generally based on how many compilations have already been registered ([Rule s 7\(b\)](#));
- (g) the name of the department or agency that prepared the compilation ([Rule s 7\(c\)](#));
- (h) a key setting out any abbreviations used in notes to the compilation ([Rule s 7\(d\)](#));
- (i) the **enabling legislation** for an instrument, that is, the Act or instrument under which it was made ([Rule s 7\(e\)](#));
- (j) any further information prescribed by the rules ([LA s 15P\(1\)\(e\)](#)).

158 Agencies wishing to prepare their own compilations may find the following guidance useful. It takes into account not only the minimum requirements of the [LA](#) but also current best practice and the needs of users (including the courts). A template for preparing compilations is also available for download from the secure [lodgement facility](#).

159 Starting with the front matter, the compilation front page or **title page** should clearly identify the principal instrument by its name and series number (if applicable). OPC’s current practice is to provide the following information on the cover page as shown in Illustration 5A:

- (a) Australian Government branding to ensure that the compilation is easily identifiable as an official document;
- (b) the name (or title) that the instrument gives to itself ([Rule s 7\(a\)](#)), followed by any series number that may apply;
- (c) the enabling legislation (and if appropriate, provision) for the principal instrument ([Rule s 7\(e\)](#));
- (d) the compilation number ([Rule s 7\(b\)](#));
- (e) the compilation date ([LA s 15\(1\)\(a\)](#));
- (f) summary of any other significant event that may have triggered the compilation e.g. the disallowance of a provision or amendment;
- (g) the name and location of the agency that prepared the compilation e.g. “Prepared by the Office of Parliamentary Counsel, Canberra” ([Rule s 7\(c\)](#)).

Illustration 5A—sample title page for compilation

	
Example Instrument 2016	
made under the <i>Example Act 2013</i>	
Compilation No. 16	
Compilation date:	6 March 2016
Includes amendments up to:	F2016L00010
 {This compilation takes account of the disallowance of amendments made by the Senate/House of Representatives on.....at.....}	
 Prepared by {Insert agency name, city in which agency is based}	

160 Other reference information can be included in the front matter, including a table of contents even if there is no such table in the principal instrument. OPC’s current practice is to reserve the reverse of the title page (the verso title page) for a short user guide to explain what the compilation incorporates (for details, see illustration 5B).

Illustration 5B—sample reverse of title page showing user guide

<p>About this compilation</p> <p>This compilation</p> <p>This is a compilation of the <i>Example Instrument 2016</i> that shows the text of the law as amended and in force on 6 March 2016 (the compilation date).</p> <p>The notes at the end of this compilation (the endnotes) include information about amending laws and the amendment history of provisions of the compiled law.</p> <p>Uncommenced amendments</p> <p>The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.</p> <p>Application, saving and transitional provisions for provisions and amendments</p> <p>If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.</p> <p>Modifications</p> <p>If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.</p> <p>Self-repealing provisions</p> <p>If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.</p>

161 The compilation number and compilation date should also be recorded in the footer of each page (see illustration 5C).

Illustration 5C—sample page footer

<i>Example Instrument 2016</i>	5
Compilation No. 16	Compilation date: 06/03/2016

162 The **body** of the compilation shows the text of the principal instrument as in force as at the compilation date. Before updating the text, it is important to identify which amendments to incorporate. As the sample user guide above suggests, only those amendments that have commenced at the compilation date can be incorporated into the text. The following should be noted in the endnotes, but not incorporated into the text:

- (a) any amendment that has not commenced at the compilation date (see also paragraph 168(b));
- (b) any application, saving or transitional provision that is not incorporated into the principal instrument by an amendment (see also paragraph 167(d));

- (c) any amendment that cannot be incorporated because it is misdescribed and the rule-maker's intention is unclear (see also paragraphs 169 and 170);
- (d) the expiry or cessation of a provision—a provision should only be removed from the text if it has been repealed.

163 It is not necessary to note or incorporate modifications, that is, an alteration to the text of the principal instrument that is not permanent or that only applies to particular locations or cases. Links to and from the modifying legislation will normally be created when that legislation is registered but, if this is not the case, please let OPC know by using the [feedback form](#) on the Register (public) website or email lodge@legislation.gov.au.

164 It is important to take a systematic approach to incorporating amendments into the text of the principal instrument. In particular:

- (a) any automatic numbering that may have been used must be turned off—otherwise any insertions or omissions may not be shown with the correct provision numbers; and
- (b) styles or equivalent formatting devices should be used to format text wherever practicable—this will deliver a consistent look and feel, and make it easy to update any table of contents; and
- (c) any solely commencing, amending or repealing provisions in the instrument should be checked to establish whether they should be removed in accordance with the automatic repeal provisions in Part 3 of Chapter 3 of the [LA](#).

165 After the amendments have been incorporated into the text, it is important to document the changes made to the text, the authority for making the changes and other matters. This information should be set out in *endnotes*, that is, notes after the body of a compilation. OPC's current practice is to include at least 4 endnotes, and to explain the purpose and structure of the endnotes in the first endnote (see illustration 5D).

Illustration 5D—sample endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

166 Endnote 2, the abbreviation key, meets the requirement of paragraph 7(d) of the [Rule](#) and sets out abbreviations that may be used in the endnotes. The most complex compilations prepared by OPC may use over 30 abbreviations. Agencies should use the same abbreviations as OPC to avoid confusing readers, but may wish to specify additional abbreviations for matters not covered by the standard OPC abbreviations. OPC can provide advice on the use of abbreviations on request.

167 Endnote 3, the legislation history, meets the requirement of paragraph 15P(1)(c) of the [LA](#) for compilations to include commencement and other details for any Act or instrument that amends the principal instrument. It is usual to list this material starting with the principal instrument and to refer to each amending Act or instrument in chronological order of making. The endnote should contain at least the following information for the principal instrument and each amending Act or instrument (see illustration 5E):

- (a) its full name, and any series number and year that may apply, unless some other method of citation is identified in an earlier endnote;
- (b) for an instrument—the instrument’s date of registration and registration ID (or, if it was made before 2005, the date of gazettal and Gazette number);
- (c) details of when it commenced—if, for example, some provisions commenced on one date and the remainder on another date, this should be spelt out;
- (d) the location of any application, saving or transitional provisions that are relevant to, but not included in, the principal instrument;
- (e) details of any event that has affected the text of the principal instrument—in the case of disallowance of a provision or amendment, the House, date and time of disallowance should be noted.

Illustration 5E—sample endnote 3—Legislation history

Endnote 3—Legislation history			
Name	Registration	Commencement	Application, saving and transitional provisions
Example Directions 2012	11 Nov 2012 (F2012L02395)	1 Jan 2013 (s 2)	
Example Amendment Directions 2012	11 Dec 2012 (F2012L02412)	Sch 1: 11 Oct 2013 (s 2)	—
Example Amendment Directions 2013	11 Apr 2013 (F2013L00649)	Sch 1 (items 52–57): 12 Apr 2013 (s 2 item 2)	—
Example Amendment Directions 2013 (No. 1)	28 June 2013 (F2013L01243)	1 July 2013 (s 2)	—
Example Amendment Directions 2015	2 June 2015 (F2015L00780)	Sch 2: 1 July 2015 (s 2(1) item 1) Note: Sch 2 was disallowed by the Senate on 25 June 2015 at 13:42	—
Example Amendment Directions 2015 (No. 1)	12 July 2015 (F2015L01138)	13 July 2015 (s 2(1) item 1) Note: disallowed by the Senate on 11 Aug 2015 at 17:02	—

168 Endnote 4, the amendment history, meets the requirement of paragraph 15P(1)(d) of the LA for compilations to include the amendment history of each amended provision. OPC generally annotates amendments to the section level or higher as appropriate. As illustrated in illustration 5F, the endnote should note the nature of, and authority for, any change and in particular:

- (a) identify the authority for a change by its full name unless a suitable acronym or a series number and year is identified in an earlier endnote; and
- (b) use underlining to indicate changes that have not commenced such as:
 - (i) uncommenced amendments; and
 - (ii) self-repealing provisions that have not yet operated; and
- (c) if a provision of the instrument as made or an amendment to the instrument has been disallowed in part or in full, an annotation to this effect.

Illustration 5F—sample endnote 4—Amendment history

Endnote 4—Amendment history	
Provision affected	How affected
Part 1	
s 1.02.....	rep LA s 48D
s 1.03.....	amNo 284, 2012; No 51, 2013; No 114, 2015 (disallowed)
s 1.04.....	amNo 284, 2012; No 51, 2013; No 114, 2015 (disallowed)
Part 2	
Division 2.1	
s 2.01.....	amNo 51, 2013
Division 2.2	
s 2.03.....	amNo 51, 2013
Division 2.3	
s 2.04.....	amNo 284, 2012 (Sch 1 item 2 md not incorp)
s 2.05.....	amNo 284, 2012
s 2.05A.....	adNo 136, 2013 (md)
Division 2.5	
s 2.11.....	amNo 51, 2013
Division 2.6	
s 2.13.....	amNo 114, 2015 (disallowed)
Part 3	
Part 3.....	adNo 114, 2015 (disallowed)
s 3.01.....	adNo 114, 2015 (disallowed)
Schedule 1	
Schedule 1.....	amNo 284, 2012; No 51, 2013
	rs No 114, 2015 (disallowed)

169 Special care is needed if an amendment does not accurately describe the amendments to be made, and it may be necessary or desirable to get legal advice on whether and how to apply the amendment. For example, it may be that an amendment:

- (a) cites an incorrect provision (e.g. subsection 296T(1) instead of 269T(1)); or

- (b) cites the text of a provision incorrectly (e.g. it may provide for the omission of text ending in “a child” when the existing provision uses the term “the child”); or
- (c) repeals and substitutes a provision that has already been repealed by some other means (such as automatic repeal).

170 If such a misdescribed amendment can be given effect as intended, it should be incorporated into the text and the abbreviation “(md)” noted after the amendment in the amendment history. If not, the abbreviation “(md not incorp)” should be noted in the amendment history. If OPC is preparing the compilation, it is OPC’s practice to:

- (a) notify the relevant rule-maker so the amendments can be corrected as soon as practicable; and
- (b) continue to list the amendments as misdescribed until the amendment has been corrected.

171 An additional Endnote 5, miscellaneous, is not mandatory but may be used if there are other matters that may be relevant to the compilation. For example, if the principal instrument applies, adopts or incorporates another document by reference, it may be appropriate to include a note about any changes in:

- (a) the availability or location of the other document; or
- (b) the content or currency of the document—for example, a new version may have been issued but the old version continues to apply to the principal instrument consistent with section 14 of the [LA](#).

172 For information and assistance on compilations, please contact OPC (lodge@legislation.gov.au or (02) 6120 1350).

Scope to correct errors and make other changes

173 It is now possible to make editorial changes and other changes to an instrument as part of preparing a compilation (and for examples, see sections 15V and 15X of the [LA](#)). However, this power:

- (a) can only be used by the First Parliamentary Counsel—there is no scope for agencies to make editorial changes in an agency-prepared compilation of a legislative instrument or a notifiable instrument; and
- (b) cannot be used to change the effect of an instrument; and
- (c) may not be appropriate if, for example, a law requires consultation with or approval from another jurisdiction such as New Zealand, or involves a referral of power from States and Territories.

174 If your agency would like to nominate an instrument for editorial changes, please email OPC (lodge@legislation.gov.au) with more information about what changes are sought

and why the changes are desirable. Fees may apply for the preparation of associated compilations, if the First Parliamentary Counsel agrees that changes can and should be made.

How to lodge compilations for registration

175 The processes for, and fees associated with, lodging a compilation for registration are very similar to those for lodging a legislative instrument. For current guidance and help on these matters, see the [lodgement facility](#) or contact the Register Help Desk on (02) 6120 1350.

176 Please note an agency's responsibility for a compilation does not end with its lodgement. If it emerges that a compilation is incomplete or inaccurate, it must be withdrawn as soon as practicable ([Rule s 6\(3\)](#)). If that is no longer possible, then the error must be notified to OPC without delay ([LA s 15L\(1\)\(e\)](#)). Further guidance on how to report events affecting the accuracy and completeness of the Register is provided in [Chapter 6](#) of this Handbook.

Chapter 6—Keeping the Register up-to-date

Main points

- An agency’s responsibility for an instrument does not end when the instrument is lodged for registration.
- Agencies need to take action if a lodgement is found to contain errors or if an event affects the accuracy and completeness of the Register.

General

177 The Register is an important resource for courts and other users and section 15B of the [LA](#) provides that it is “for all purposes, taken to be a complete and accurate record of all registered Acts, legislative instruments and notifiable instruments”.

178 Users of the Register are also subject to special legal protections. Subsection 15D(2) of the [LA](#) provides that, if the Register is erroneous because of a mistake or omission and the Register is altered to correct the error, the alteration does not:

- (a) affect any right or privilege acquired or accrued by reason of reliance on the content of the Register before the alteration was made; or
- (b) impose or increase any obligation or liability incurred before the alteration was made.

179 In other words, there is a clear expectation that agencies and OPC will work together to keep the Register up-to-date.

Agencies must act on lodgements found to contain errors

180 Although OPC performs basic checks on every document that is registered, agencies are responsible for ensuring that the documents they lodge for registration are complete and accurate. Consequently, if it emerges that a lodgement is incomplete or inaccurate, the person who lodged it must withdraw it as soon as practicable (see [Rule s 6\(3\)](#)). This can be done:

- (a) by using the online lodgement facility at <https://lodge.legislation.gov.au>; or
- (b) by emailing lodge@legislation.gov.au.

181 It may be that it is not possible to withdraw a lodgement e.g. because it has already been registered. If so, this must be notified to OPC without delay in accordance with paragraph 15L(1)(e) of the [LA](#). This does not require a log-on, and can be done by any member of the public by using the [Feedback form](#) on the Register website or emailing lodge@legislation.gov.au.

Agencies must notify other events affecting the Register

182 As part of its registration services, OPC routinely monitors a range of ‘downstream’ processes that may affect the accuracy and completeness of registered laws. OPC does not need to be notified of, and will update the Register for, the following events:

- (a) the occurrence of a specified day or time;
- (b) the commencement of, or changes in the commencement, of a registered law where the commencement is linked to either:
 - (i) the commencement of another registered law; or
 - (ii) a commencement instrument that has been lodged for registration (LA s 15L(2)(a));
- (c) required compilation events as described in paragraph 145 (LA s 15L(2)(b));
- (d) the automatic repeal of a registered law that is solely commencing, amending or repealing under Part 3 of Chapter 3 of the LA (LA s 15L(2)(d)(i));
- (e) the disallowance and sunseting of legislative instruments (LA s 15L(2)(d));
- (f) any other event prescribed by the rules (none at time of writing) (LA s 15L(2)(e)).

183 OPC is not, however, able to monitor all of the events that could affect instruments and other registered laws. OPC relies on agencies to monitor and notify other events that may affect registered laws in accordance with subsection 15L(1) of the LA. Agencies are required to notify OPC of any other event that has the effect of:

- (a) commencing a registered law (LA s 15L(1)(a)); or
- (b) amending or modifying the text of a registered law as in force (see also paragraph 147 on discretionary compilation events) (LA s 15L(1)(b)); or
- (c) repealing a registered law, or otherwise causing a registered law to cease to be in force (LA s 15L(1)(c)); or
- (d) rendering a registered law invalid or unenforceable (LA s 15L(1)(d)).

184 Examples of events that agencies must notify are as follows:

- (a) the commencement of State or Territory law or of an international treaty, where this triggers the commencement of a registered law;
- (b) the implied amendment of a registered law, for example, by an amendment that is broadly framed and that does not specify each law that is amended;
- (c) the implied repeal of a law, for example, by the repeal of an instrument’s enabling legislation or provision;

- (d) the preservation of an instrument by a saving, application or transitional provision despite the repeal of its enabling legislation or provision.

185 Agencies are asked to notify OPC of events by emailing lodge@legislation.gov.au and to attach or provide links to documentary evidence of the relevant event, such as a court judgement or a written statement from an SES employee (see [Rule s 13](#)). This evidence may be registered and as such, must not contain classified or sensitive information.

If an error is found in the Register

186 If an agency or another user of the Register notifies OPC of an error in the Register, the matter will be investigated consistent with the First Parliamentary Counsel's obligation to correct errors under subsection 15D(1) of the [LA](#). A correction may be appropriate if, for example:

- (a) a symbol or mathematical formula is not displaying correctly in the authorised version of an instrument; or
- (b) an amendment has not been incorporated into a compilation correctly or in a timely manner (for example, because commencement was tied to an event that was not notified promptly); or
- (c) an event (other than repeal by a Commonwealth Act or instrument) has ended an instrument's operation.

187 If a correction is made, both the corrected and the original document remain on the Register to enable users to assess the legal effect of changes. The Register is also annotated to show that a correction has been made and to outline the correction in general terms ([LA s 15D\(1\)\(b\)\)](#).

188 A correction may not be appropriate in every instance. For example, if the text of an instrument contains a typographical error but the text is consistent with the text made by the rule-maker, the error cannot be corrected under section 15D of the [LA](#). However, in this example, it may be possible for OPC to prepare a compilation that incorporates an editorial change that fixes the error. For more information on OPC's editorial powers, see paragraphs 173 and 174.

Scope for redaction or removal of registered documents

189 It is not possible to remove a registered document from the Register because of privacy or other concerns once the document has been registered. The [LA](#) makes no provision for the redaction (blacking out) or the removal of any document that is required to be registered, even if a court has declared an instrument to be void.

190 If your agency has serious concerns about the content of a registered document, please contact OPC (lodge@legislation.gov.au) to discuss the issues and options. It may be possible, for example, to clarify the status of an instrument by adding information or documents such as a court judgement.

Scope for republication of registered content

191 It is now possible to make authorised versions of registered documents from the PDF files published on the Register ([Rule s 14\(1\)](#)). The electronic version, and any print version that is made from it, must also contain a specific phrase, such as “Authorised version” as used from March 2016. For a complete list of specified phrases, see subsection 14(2) of the [Rule](#).

192 Wholesale or commercial reproduction of registered content is subject to the [Copyright Act 1968](#), other relevant laws and the relevant Creative Commons licence. However, there are still some restrictions on the use of some content (such as the Commonwealth coat of arms). Please refer to the [copyright notice on the Register website](#) for details.

193 Agencies wishing to reproduce registered content should also be aware that this has inherent risks as the law is subject to change. Failure to keep agency websites in particular up-to-date may raise questions of legal liability. It may, therefore, be better to provide simple links to relevant content on the Register. This can be done as follows, with the relevant document ID substituted for FyyyyLnnnnn:

Use this link format	To link users to
www.legislation.gov.au/Details/FyyyyLnnnnn	a particular version of a law—not recommended unless the intent is to link to a historic version
www.legislation.gov.au/Latest/FyyyyLnnnnn	the latest version of a law
www.legislation.gov.au/Series/FyyyyLnnnnn	the series page, which shows all available versions of a law and any instruments/notices enabled by it

194 If an agency still wants or needs to reproduce registered content, it would be prudent to do so using the authorised version as described in paragraph 191, and also to include an [appropriate attribution](#) so that users can easily check the Register for up-to-date information.

195 Agencies can also order bound print copies of registered documents online, by locating the relevant document on the Register and using the “Buy Print Copy” facility. Please email OPC (printservices@opc.gov.au) if your agency would like a quote on:

- (a) bulk orders; or
- (b) legislation that has not commenced; or
- (c) custom print requirements such as the combination of multiple documents into a single volume, custom covers, custom binding or colour printing.

196 If your agency receives a request about copyright of content that it has contributed to the Register, please review the [copyright permissions for the Register website](#). It may be that no additional permission is required. Alternatively, if the request involves the issues identified in paragraph 191, the request may need to be referred to other bodies.

If an instrument is no longer required

197 Parts 3 and 4 of Chapter 3 of the [LA](#) encourage the timely repeal of instruments that are no longer required. An instrument that is repealed remains on permanent public record on the Register, but no longer displays as in force. An instrument may be repealed:

- (a) by the automatic and bulk repeal provisions of Part 3 of Chapter 3 of the [LA](#); or
- (b) by the rule-maker; or
- (c) if it is a legislative instrument—by sunseting under Part 4 of Chapter 3 of the [LA](#).

Automatic and bulk repeal under Part 3 of Chapter 3 of the LA

198 Since late 2012, all new instruments that are solely commencing, amending or repealing are subject to automatic repeal as soon as they have been registered and operated in full (see paragraph 80). In addition, existing instruments and provisions can now be repealed in bulk by means of a regulation made under section 48E of the [LA](#).

199 Automatic and bulk repeal does not undo the effect of the instrument, or affect whether or not the instrument is subject to disallowance. Bulk repeal may also be used to repeal instruments that:

- (a) are spent but currently exempt from sunseting; or
- (b) may not have been validly made; or
- (c) are no longer required for whatever reason.

200 Agencies, not OPC, are responsible for assessing whether there are any statutory or other impediments to the repeal of an instrument and, if appropriate, seeking legal advice about this matter in accordance with the [Legal Services Directions](#) as in force from time to time. It may not be appropriate to list an instrument for bulk repeal if, for example, it:

- (a) is described in its enabling legislation as irrevocable; or
- (b) amends or modifies something that is not available on the Register (such as an aircraft maintenance manual, or a law enacted by a State government); or
- (c) is referenced in the laws of another jurisdiction and changes to that law are required to ensure that there are no unintended consequences.

201 For more information about any aspect of automatic or bulk repeal, please contact OPC (sunsetting@opc.gov.au or (02) 6120 1350).

Direct repeal by rule-maker

202 A rule-maker who is authorised to make a particular instrument can repeal any instrument of the same type no matter who made it. If a rule-maker is required or wishes to use OPC's drafting services, please contact OPC with the details. Otherwise, please note that:

- (a) any date specified for repeal must not be later than any sunset date that may apply under Part 4 of Chapter 3 of the [LA](#); and
- (b) it is important to use the word “repeal” to link clearly back to section 7 of the [Acts Interpretation Act 1901](#), unless another term is required by the enabling legislation; and
- (c) if the instrument of repeal includes a transitional, saving or application provision that is not to be inserted into the principal instrument by amendment, a self-repealing provision should also be considered.

203 For further guidance on how to repeal instruments, including the drafting of self-repealing provisions, see [Chapter 3](#).

Sunseting under Part 4 of Chapter 3 of the LA

204 If a legislative instrument is no longer required, it is preferable to repeal the instrument explicitly. Doing nothing does not guarantee that an instrument will, in fact, sunset because the instrument may be exempt from sunseting. Even if an instrument is subject to sunseting, any Senator or Member may move for a resolution to defer (“roll over”) its sunset date by 10 years.

205 For further guidance on sunseting processes, see [Chapter 10](#) of this Handbook.

Part 2—Matters specific to legislative instruments

Chapter 7—Before making a legislative instrument

Main points

- Before making a legislative instrument, a rule-maker is required to do a range of things (or to arrange for these to be done).
- In particular, the rule-maker must be satisfied that consultation has been undertaken to the extent that is appropriate and practicable.
- The rule-maker must also assess the regulatory impact of a proposal, and consider a range of other matters.

What is making?

206 For the purposes of the [LA](#), the *making* of a legislative instrument is the signing, sealing or other endorsement of the instrument by the person or body empowered to make it, by which it becomes a legislative instrument ([LA](#) s 4(1)).

Requirement to consult before making

207 The [LA](#) requires a rule-maker, before making a legislative instrument, to be satisfied that any consultation the rule-maker considers to be appropriate and reasonably practicable has been undertaken ([LA](#) s 17(1)). This requirement applies to all legislative instruments.

208 The [LA](#) provides that, in deciding whether consultation is appropriate, the rule-maker may have regard to the extent to which consultation drew on the knowledge of relevant subject matter experts and ensured that persons likely to be affected by the proposed instrument had an adequate opportunity to comment on its proposed content ([LA](#) s 17(2)). Consultation could involve ([LA](#) s 17(3)):

- (a) notifying representative bodies or organisations (either directly or by advertisement); and
- (b) inviting submissions or participation in public hearings.

209 Although the [LA](#) is not prescriptive about consultation, agencies should note that the Parliament takes the obligation to consult seriously. Inadequate consultation is one of the most frequent grounds of criticism by the Senate Standing Committee on Regulations and Ordinances (SSCRO). Consequently, agencies should:

- (a) establish what the rule-maker considers to be the most appropriate form of consultation at an early stage of the process; and
- (b) satisfy the rule-maker that consultation has been undertaken to the required standard before the instrument is made; and

- (c) ensure that the explanatory statement for an instrument provides an adequate description of either:
 - (i) the consultation process and outcomes; or
 - (ii) if no consultation was undertaken, the reasons for not consulting (see paragraphs 211 to 213).

210 An explanatory statement that does not mention consultation, or that contains only a superficial description, is likely to result in the relevant Minister being asked to provide additional information or take other action by SSCRO. Further guidance on how to meet the requirements of the [LA](#) and the Parliament is provided on the SSCRO website¹⁶.

When consultation may be unnecessary or inappropriate

211 The [LA](#) does not require consultation if the rule-maker considers it inappropriate or impractical. It may be, for example, that a legislative instrument:

- (a) is of a minor or machinery nature or does not substantially alter existing arrangements; or
- (b) is required urgently; or
- (c) implements a decision announced in the Budget; or
- (d) is required because of a national security issue; or
- (e) is an instrument for which appropriate consultation has already been undertaken by somebody else; or
- (f) relates to employment; or
- (g) relates to the management of, or to the service of members of, the Australian Defence Force.

212 Even if an instrument falls into one of these examples, a case-by-case assessment is still important and necessary to satisfy the requirements of section 17 of the [LA](#) and of scrutiny bodies.

Consequences of failure to consult

213 Failure to consult in relation to a legislative instrument does not affect the validity or enforceability of the instrument ([LA](#) s 19). However, the rule-maker must explain why consultation was unnecessary or inappropriate in the explanatory statement that is registered and tabled with the instrument in the Parliament (see also [Chapter 8](#)).

¹⁶ See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances

Requirement to assess regulatory impacts before making

214 Before the decision is taken to make an instrument, a regulatory impact assessment must be undertaken consistent with the Government's deregulation policies. A formal Regulation Impact Statement (RIS) may also need to be prepared.

215 Failure to comply with the RIS requirements does not invalidate an instrument, but is a breach of Government policy and will be publicly reported by the Office of Best Practice Regulation (OBPR). More information on the current requirements is available from the OBPR website¹⁷ and on request (helpdesk-obpr@pmc.gov.au or (02) 6271 6270).

216 Note also that, if a RIS that relates to an instrument has been completed, the entire RIS must be included in, or attached to, the instrument's explanatory statement.

Other requirements to consider before making

217 There are a range of other requirements a rule-maker may need to consider before making a legislative instrument or approving an explanatory statement. For example, as a matter of process, before making an instrument:

- (a) during the caretaker (election) period—it may be necessary to consider the caretaker conventions, even if the rule-maker is a statutory authority or officeholder rather than a Minister or department¹⁸; or
- (b) that is the same in substance as an instrument that has been registered or disallowed recently—it may be necessary to consider the restrictions on remaking that apply before and after tabling (see [Chapter 9](#)); or
- (c) that is intended to amend or replace an instrument that has already sunsetted or will sunset soon—it is necessary to consider a range of other issues (see [Chapter 10](#)).

¹⁷ See <http://www.dpmc.gov.au/regulation/developing-regulation-impact-statement>

¹⁸ See <https://www.dpmc.gov.au/resource-centre/government/guidance-caretaker-conventions>

Chapter 8—Explanatory statements

Main points

- Each new legislative instrument must have an explanatory statement approved by the rule-maker, but a single statement may relate to one or more legislative instruments.
- An explanatory statement must contain certain information and should also take into account the requirements of the Federal Executive Council (ExCo) Secretariat and of parliamentary committees if applicable.
- The explanatory statement must be lodged with OPC for registration with, or as soon as practicable after, the legislative instrument to which it relates.
- The explanatory statement is likely to attract question and comment if it is not able to be tabled with the instrument or does not meet parliamentary requirements.
- If the initial explanatory statement provided by a rule-maker is incomplete or inaccurate, it may be possible to lodge a supplementary or replacement statement with OPC for registration on the Register.

General

218 Explanatory statements are an important resource for readers of legislative instruments and, under section 15AB of the [Acts Interpretation Act 1901](#), may be used by a court to help interpret an instrument. A well-prepared explanatory statement is also desirable to facilitate:

- (a) parliamentary scrutiny of the legislative instrument; and
- (b) compliance with the instrument by agencies and external stakeholders.

219 Although each legislative instrument must be accompanied by an explanatory statement, a single explanatory statement may relate to one or more legislative instruments ([LA](#) s 15J(4)). This may be appropriate if, for example, several instruments are made under the same enabling legislation at the same time. However, careful consideration should be given to the content and timing requirements outlined in paragraphs 223 and 250.

Responsibility for approving explanatory statements

220 Agencies must ensure that any explanatory statement that they lodge in relation to an instrument has been approved by the relevant rule-maker as required by section 15J of the [LA](#). It is also usual to submit explanatory statements to rule-makers at the same time as the legislative instruments that they explain so that all related documents can be lodged, registered and tabled together.

221 In the case of a legislative instrument made by the Governor-General, the explanatory statement can be approved by the relevant Minister (see [LA](#) s 6(1)(a)). The explanatory statement does not generally need to be submitted to ExCo, and should not be confused with

the explanatory memorandum that is required for ExCo purposes. For further information on ExCo requirements and processes, see the Federal Executive Council Handbook¹⁹.

Content of explanatory statements

222 The explanatory statement for an instrument should be as clear and helpful as possible. The more complex the instrument, the more extensive the explanatory statement needs to be to achieve this.

223 To make it easy to identify an explanatory statement and the instrument that it explains, it is usual to present the following information at the top of the first page:

- (a) the name of the document e.g. “Explanatory Statement” (if necessary prefaced by the words “Replacement” or “Supplementary”); and
- (b) the complete name of the instrument to which the statement relates, as specified in the instrument.

224 When it comes to the content of the statement, section 15J of the [LA](#) sets out the minimum standards in some detail. An initial or replacement explanatory statement must:

- (a) be approved 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 incorporated documents and indicate how they may be obtained; and
- (d) if consultation was undertaken under section 17 of the [LA](#) before the instrument was made—contain a description of the nature of the consultation; and
- (e) if no such consultation was undertaken—explain why no such consultation was undertaken; and
- (f) if the instrument is disallowable—contain a statement of compatibility prepared under subsection 9(1) of the [Human Rights \(Parliamentary Scrutiny\) Act 2011](#); and
- (g) contain any other information prescribed by regulation (none at time of writing).

225 A supplementary explanatory statement must also be approved by the rule-maker and must contain any other information prescribed by regulation (none at time of writing).

226 It may be necessary or desirable to include other content to provide assurance that key legal requirements or issues have been considered, and to facilitate parliamentary scrutiny. Other content considerations are discussed in paragraphs 234 to 249.

¹⁹ See <https://www.dpmc.gov.au/resource-centre/government/federal-executive-council-handbook-2017>

Purpose and operation of instrument

227 The explanatory statement should contain sufficient information to enable readers to understand the need for the instrument, its objectives and its intended operation. As a guide, it is desirable for the statement to include the following information:

- (a) the issues giving rise to the need for the legislative instrument;
- (b) why legislation is necessary to address the issues;
- (c) an explanation of how the instrument is intended to operate, and its likely impact.

228 Although the [LA](#) does not insist on a provision-by-provision explanation, this is often useful and may be necessary to meet the needs of users particularly scrutiny bodies such as SSCRO (see paragraph 238).

Documents incorporated by reference

229 If an instrument incorporates a document by reference and the document is not a Commonwealth Act or disallowable legislative instrument, the explanatory statement must describe each document that has been incorporated and indicate how the document may be obtained ([LA](#) s 15JC(2)(c)). In describing such documents, the explanatory statement should:

- (a) state whether the document is incorporated as in force from time to time or as at a particular time; and
- (b) if the document is incorporated as in force at a particular time—state the time; and
- (c) if the document is incorporated as in force from time to time—comment on the application of subsection 14(2) of the [LA](#) and mention any contrary provision in the enabling legislation that displaces it.

230 If an instrument does not incorporate a document by reference, a statement in the explanatory statement indicating this can assist in expediting parliamentary scrutiny.

231 Please refer to paragraphs 85 to 89, 267 and 268 of this Handbook for further information on documents incorporated by reference.

Consultation

232 The explanatory statement must contain a description of any consultation undertaken under section 17 of the [LA](#) before the instrument was made or, if no such consultation was undertaken, an explanation as to why no such consultation was undertaken. The requirement for consultation before making a legislative instrument is discussed in more detail in [Chapter 7](#).

Human rights compatibility

233 Under paragraph 15J(2)(f) of the [LA](#), if a legislative instrument is disallowable, its explanatory statement must include a statement of compatibility prepared under subsection 9(1) of the [Human Rights \(Parliamentary Scrutiny\) Act 2011](#) that assesses the instrument's compatibility with the rights and freedoms contained in seven core human rights

treaties to which Australia is a party. More information on human rights and how to assess compatibility is available on the AGD website²⁰.

Other content considerations

234 In considering what to include in an explanatory statement, it is useful to take into account the needs of users. The following guidance takes into account issues of particular interest to the Parliament. For general guidance on formatting matters, including use of images and hidden content, see paragraphs 103 to 109.

Best Practice Regulation requirements

235 If a Regulation Impact Statement (RIS) has been completed, the entire RIS must be included in or attached to the instrument's explanatory statement for tabling purposes.

236 Even if a RIS has not been completed, it is desirable to describe the regulatory impact assessment process and outcomes and include any OBPR reference number. This provides assurance that the Australian Government's best practice regulation requirements have been met. For more information about these requirements, please contact OBPR (helpdesk-obpr@pmc.gov.au or (02) 6271 6270).

Senate Standing Committee on Regulations and Ordinances (SSCRO) requirements

237 SSCRO reviews each disallowable instrument that is tabled in the Parliament against a set of scrutiny principles that focus on individual rights and liberties and standards of parliamentary propriety.

238 SSCRO places considerable reliance on explanatory statements to understand legislative instruments and to assess their purpose. Current SSCRO requirements are that every regulation or disallowable instrument must be accompanied by a precise and informative explanatory statement that:

- (a) provides a plain English explanation; and
- (b) states the authority for making the instrument; and
- (c) states the reasons for making the instrument (see also [LA s 15J\(2\)\(b\)](#)); and
- (d) summarises the likely impact and effect of the instrument (see also [LA s 15J\(2\)\(b\)](#)); and
- (e) discusses any unusual aspects or matters that call for special comment (this issue is discussed further in paragraph 239); and
- (f) gives reasons for and the basis upon which charges or fees have been increased or decreased (if applicable); and
- (g) describes the nature of any consultation undertaken or explains why no such consultation was undertaken (see also [LA s 15J\(2\)\(d\)](#) and (e)); and

²⁰ See <http://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/default.aspx>

- (h) describes any document incorporated by reference (including the manner in which it is incorporated and the legislative authority for the manner of incorporation) and, if it is not a Commonwealth Act or disallowable legislative instrument, indicates how it may be obtained (see also [LA s 15J\(2\)\(c\)](#)); and
- (i) provides a detailed provision-by-provision description of the instrument.

239 Unusual aspects or matters that call for special comment will include any issue that SSCRO has identified as relevant to its scrutiny principles²¹. SSCRO is likely to scrutinise closely any instrument that involves, for example, any of the following issues:

- (a) making of an instrument before its enabling provision has commenced, in reliance on subsection 4(2) of the [Acts Interpretation Act 1901](#);
- (b) retrospective commencement in light of subsection 12(2) of the [LA](#) and any other relevant legislation;
- (c) (sub)delegation of powers—issues may include not only the validity of sub-delegation but also the seniority and expertise of the delegate(s);
- (d) decision-making criteria that are formulated on a subjective basis (e.g. “in the Minister’s opinion”);
- (e) failure to provide for merits review of discretionary decisions;
- (f) penalties and offences, particularly the creation of strict liability offences;
- (g) discretions to record or pass on information and associated privacy considerations.

240 SSCRO has also requested that, if an instrument relies on subsection 33(3) of the [Acts Interpretation Act 1901](#) for the power to amend, modify or repeal an instrument, the explanatory statement should say so in the interests of promoting the clarity and intelligibility of the instrument to users. SSCRO has provided the following example of a form of words that may be included in an explanatory statement where relevant:

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.²²

241 Agencies should respond quickly if SSCRO asks questions or expresses concern about a legislative instrument. Failure to do so may result in adverse parliamentary comment and possibly disallowance of the instrument. If the instrument was drafted by OPC, agencies should also contact their OPC drafter.

²¹ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/guidelines/principles

²² This form of words is set out in *Delegated legislation monitor* No. 7 of 2015 (page 9) and earlier Committee documents, see http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Monitor

242 Further information on issues and instruments of concern to SSCRO is available on the SSCRO website²³.

Parliamentary Joint Committee on Human Rights requirements

243 The Parliamentary Joint Committee on Human Rights reviews each legislative instrument that is tabled in the Parliament for human rights compatibility in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*.

244 The committee views statements of compatibility as essential to the consideration of human rights in the legislative process, and expects statements to set out the necessary information in a way that allows the committee to undertake its scrutiny task efficiently. The committee expects statements of compatibility to be able to be read as stand-alone documents.

245 If the rule-maker considers that no rights are engaged, the committee expects that reasons should be given, if possible, to support that conclusion. This is particularly important where such a conclusion may not be self-evident from the description of the instrument's objective.

246 If human rights are limited by a legislative instrument, the committee prefers statements of compatibility to follow the sequence of steps set out in the assessment tool and associated guidance developed by AGD²⁴. Statements should provide information on:

- (a) whether and how the limitation is aimed at achieving a legitimate objective; and
- (b) whether and how there is a rational connection between the limitation and the objective; and
- (c) whether and how the limitation is reasonable, necessary, and proportionate.

247 Further guidance on issues and instruments of concern to the committee is available on the committee's website²⁵.

Previous ministerial or parliamentary undertakings

248 A Minister or rule-maker may, on occasion, give an undertaking to the Parliament or a committee of the Parliament to review or change how an instrument operates, or to change drafting, consultation or other practices before making a similar instrument. If such an undertaking is relevant to a new instrument, the undertaking should be acknowledged and its implementation discussed in the explanatory statement for the new instrument.

If an instrument or provision is very similar in substance to one made recently

249 The LA imposes significant restrictions on remaking an instrument or provision before, and for a period after, tabling. Consequently, if an instrument or provision is being remade while restrictions apply or shortly after they end, the explanatory statement should

²³ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances

²⁴ See <http://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/default.aspx>

²⁵ See http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights

acknowledge the restrictions and explain why they do not apply (see paragraphs 288 to 296 for more detail).

Consequences of failure to provide explanatory statements on time

250 An explanatory statement for a legislative instrument must be lodged with OPC for registration at the same time as, or as soon as practicable after, the legislative instrument that it explains ([LA s 15G\(4\)\(a\)](#)). Although a failure to lodge the explanatory statement as required does not affect the validity or enforceability of the registered instrument ([LA s 15K\(2\)](#)), the rule-maker:

- (a) remains under a statutory obligation to lodge the explanatory statement with OPC for registration; and
- (b) must arrange for a written explanation to be tabled in the Parliament if the explanatory statement for an instrument is not lodged before the instrument is delivered by OPC for tabling ([LA s 39\(3\)](#)); and
- (c) should expect adverse comment from relevant parliamentary committees if this happens.

If there is a significant error or omission in an explanatory statement

251 If there is a significant error or omission in the initial explanatory statement provided for an instrument, there are things an agency or rule-maker can do to address this.

252 It may be appropriate for a supplementary or replacement explanatory statement to be lodged and delivered to the Parliament, even if the instrument is no longer open to disallowance. As part of this, the agency will need to:

- (a) consider which form of statement is most appropriate (a supplementary statement may suffice if the issue is a minor omission); and
- (b) get the rule-maker's approval for the supplementary or replacement statement; and
- (c) lodge the supplementary or replacement statement online with OPC, so that OPC can register and deliver it for tabling in accordance with section 39 of the [LA](#).

253 If there are special requirements for a statement to be tabled by a particular date to ensure that an instrument is not disallowed, agencies are advised to contact OPC. Under no circumstances should agencies attempt to lodge statements directly with the Table Offices or scrutiny bodies.

Supporting material

254 Any supporting material that should be made available with an instrument should also be attached (uploaded) to the online lodgement form. As with instruments and explanatory statements, these documents:

- (a) must be in .rtf, .doc or .docx format unless the First Parliamentary Counsel has agreed to some other format (see [Rule s 5\(3\)](#)); and
- (b) must not contain macros, fields or other dynamic content that may interfere with the content of the document (see [Rule s 5\(4\)](#)).

Chapter 9—Parliamentary scrutiny (disallowance) processes

Main points

- All legislative instruments that are registered must be tabled in each House of the Parliament and, unless an exemption applies, they may be disallowed by either House.
- OPC is responsible for delivering legislative instruments and their explanatory statements to the Parliament for tabling.
- The Parliamentary Table Offices are responsible for tabling legislative instruments and explanatory statements.
- The parliamentary sitting schedule determines when a legislative instrument can be tabled and how long it is open to disallowance (if applicable).
- If notice of motion to disallow is given but is not dealt with within 15 sitting days of tabling, the legislative instrument is automatically disallowed.
- If a legislative instrument is disallowed, or is not tabled within 6 sitting days of registration, it ceases immediately and any amendment or repeal made by it is undone.
- A legislative instrument that has been registered recently, that is open to disallowance, or that has been disallowed in the last 6 months, generally cannot be remade.

Background

256 Until 2005, the process for deciding which instruments should be subject to parliamentary scrutiny and disallowance was largely ad hoc. An instrument was disallowable only if its enabling legislation declared it to be a statutory rule or otherwise disallowable, and a variety of disallowance periods and regimes applied. Individual agencies were responsible for delivering instruments for tabling if and as required.

257 Part 2 of Chapter 3 of the [LA](#) establishes, with some exceptions, a single regime for parliamentary scrutiny and disallowance of legislative instruments. In particular:

- (a) all legislative instruments must be tabled in each House of the Parliament within 6 sitting days of registration to remain in effect ([LA](#) s 38); and
- (b) all legislative instruments are subject to disallowance by either House for a period of 15 sitting days ([LA](#) s 42), unless an exemption applies ([LA](#) s 44); and
- (c) a legislative instrument generally cannot be remade pending tabling or for a period after tabling ([LA](#) s 46), while open to disallowance ([LA](#) s 47) or, if the instrument is disallowed, for 6 months after disallowance ([LA](#) s 48).

258 The Parliament's sitting schedule is normally released at the start of each Parliament and each year, but extra sittings may be scheduled as needed. The Houses may sit on different days, and a *sitting day* does not necessarily correspond to a calendar day. Thus, for example:

- (a) a sitting day may extend beyond a calendar day if a House sits late; and
- (b) a sitting that is suspended and resumes on a later day generally only counts as one sitting day; and
- (c) decisions about what constitutes a sitting day of a House are ultimately matters for that House to decide.

259 For the purposes of Part 2 of Chapter 3 of the [LA](#), 15 sitting days of a House of the Parliament can equate to several months and is calculated from the first sitting day of a House after the sitting day on which the instrument is tabled. Similarly, the 6-sitting day deadline for the tabling of an instrument is calculated from the first sitting day of a House after the day of registration.

If an enabling Act has special requirements for tabling or disallowance

260 An instrument's enabling legislation sometimes includes provisions for the tabling or disallowance of instruments that duplicate or differ from the standard regime established by the LA. The LA will generally displace such special provisions, unless they:

- (a) are preserved by regulations made under subsection 57(5) of the [LA](#) (none at time of writing); or
- (b) were made after the [LA](#) commenced on 1 January 2005.

261 If a special regime for tabling or disallowance applies, agencies should flag this as a special requirement when lodging the instrument for registration, and make their own calculations as to deadlines. Agencies should also consider adopting the [LA](#) standard to avoid making the scrutiny process more complex than it needs to be²⁶.

Responsibility for delivering instruments for tabling

262 OPC is responsible for delivering registered instruments for tabling ([LA](#) s 38(1)), and generally does so as soon as practicable after they are registered whether or not the Parliament is sitting. As part of this process, OPC:

- (a) makes hard copies of each instrument and its explanatory statement; and
- (b) delivers the copies to the Table Offices, SSCRO and the Parliamentary Joint Committee on Human Rights as required; and
- (c) works with the Table Offices to ensure that instruments are tabled before the relevant deadline.

263 If an agency wants registered documents tabled urgently, or has some other specific tabling requirement, the agency should go through its normal parliamentary liaison channels to make an arrangement with the Table Offices and relevant scrutiny bodies.

264 For urgent tabling, please note that:

²⁶ See [2008 Review of the Legislation Act 2003](#), chapter 8.3.

- (a) OPC will work to prepare registered documents and reports for delivery to the Table Offices as soon as practicable but, particularly for larger documents, consideration for processing time should be taken into account; and
- (b) While agencies are required to negotiate any special arrangements with the Table Offices, OPC is still responsible for the delivery of registered documents for tabling.

265 There are strict deadlines for tabling instruments. If a registered instrument is not tabled in a House of the Parliament within 6 sitting days after the day of registration, it ceases to have effect immediately after the 6th day (LA s 38(3)).

266 OPC monitors tabling processes and routinely records relevant dates in the Register for the information of agency staff and external stakeholders. Tabling information can also be obtained from the Journals of the Senate²⁷ and the Votes and Proceedings of the House of Representatives²⁸.

If either House requires more information

267 If a House of the Parliament requires more information about an instrument, the matter would normally be raised directly with the responsible Minister. A prompt response is usually enough to resolve factual questions associated with vague or incomplete explanatory material, or access to material incorporated by reference.

268 If the matter is not dealt with to the satisfaction of a House, that House may escalate things, for example, by giving notice of motion to disallow the instrument. Less commonly, a House may also choose:

- (a) to formally require documents incorporated by reference in a disallowable legislative instrument to be made available for inspection (LA s 41); or
- (b) to refer a matter to a committee for investigation; or
- (c) to call witnesses to answer questions at hearings, which may be open or broadcast to the public.

If extra documents need to be tabled or made available

269 If a replacement or supplementary explanatory statement is issued, it needs to meet certain requirements and should be lodged promptly with OPC for registration and delivery for tabling (see paragraph 251).

270 Other documents cannot be lodged for tabling through OPC. The relevant agency should prepare and lodge these for tabling in accordance with the current Guidelines for the Presentation of [non-Register] Documents to the Parliament²⁹. It may also be appropriate to provide additional courtesy copies to relevant scrutiny bodies.

²⁷ See http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/Journals_of_the_Senate

²⁸ See http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/HoR/Votes_and_Proceedings

²⁹ See <https://www.dpmc.gov.au/resource-centre/government/guidelines-presentation-documents-parliament-0>

How disallowance works

271 Under the [LA](#), all new legislative instruments are subject to disallowance by either House of the Parliament for a set period, unless they are explicitly exempted from disallowance. Exemptions may be set out in section 44 of the [LA](#), sections 9 and 10 of the [LEOMR](#), or the enabling legislation.

272 Disallowance can still occur even if an instrument is no longer current, for example, because it is solely amending or repealing and has been subject to automatic repeal (see [LA](#) s 48A(4)). The two processes operate independently of each other, and disallowance may have broader effects on other laws as discussed in paragraph 284.

273 Tabling and disallowance requirements that were in force before 1 January 2005 have been, in almost all cases, superseded by section 57 of the [LA](#). However, earlier provisions continue to apply if those provisions:

- (a) are preserved by regulations made under subsection 57(5) of the [LA](#) (none at time of writing); or
- (b) require things to be done before, or at the same time as, a legislative instrument is tabled (e.g. to prepare a report and table it with an instrument).

What instruments are exempt from disallowance

274 When an instrument is lodged for registration, the lodging agency is asked to certify a range of information including whether an exemption from disallowance applies and, if so, what legislation authorises the exemption.

275 Most exemptions are straightforward and nominate a specific enabling provision such as instruments made under section 123 of the *XYZ Act 2012*. However, other exemptions are more generic and some can be difficult to apply, particularly if they refer to the purpose of an instrument.

276 If there is any doubt about whether an instrument is exempt, the rule-making agency should get legal advice and consider the potential risks to government policy if an instrument is listed as not subject to disallowance. There could be significant consequences if, for example, an agency claims an instrument is exempt but the Parliament does not agree.

277 If a new exemption may be appropriate, for example, because a new class of instrument is being created, the proposal should be discussed in the first instance with AGD (adminlaw@ag.gov.au or (02) 6141 2736). The formal policy approval of the responsible Minister and the Attorney-General is required for new exemptions.

When instruments are open to disallowance

278 Unless exempt from disallowance or subject to a special disallowance regime, legislative instruments are open to disallowance in whole or in part for 15 sitting days. This timeframe needs to be calculated separately for each House from the first sitting day after the day the instrument is tabled.

279 Once an instrument is tabled in a particular House, the Register will normally show an estimate of the disallowance expiry date for that House based on the current sitting schedule. However, it should be noted that the estimates are subject to change, as the parliamentary sitting schedule on which they are based may change.

280 If an election is called, the disallowance “clock” for each House generally stops and then resumes once the House starts sitting again. However, the clock must be re-started if notice of motion to disallow an instrument has been given but not resolved. An affected instrument is again open to disallowance for the full disallowance period of 15 sitting days once sittings resume (LA s 42(3)).

How notice of motion to disallow may be resolved

281 If a Senator or Member gives notice of motion to disallow an instrument, or a provision of an instrument, the standing orders of both Houses do not allow the motion to be moved on the same day. However, if a matter is controversial, a House may grant leave or suspend standing orders so that the motion is moved, debated and voted on immediately.

282 A notice of motion may be withdrawn. Once the motion is moved, it may be withdrawn or put to a vote by the House on the day specified in the motion. In the Senate, standing orders require the Senator who initiated the motion to give notice of intention to withdraw it, and permit another Senator to take over the motion even if the initial period for giving notice has elapsed. The House of Representatives does not have a similar procedure.

283 If a disallowance motion is not withdrawn, put to a vote or otherwise disposed of within 15 sitting days after the sitting day that the notice of motion is given, the relevant instrument or provision is taken to have been disallowed at the end of that period (LA s 42(2)).

If notice of motion to disallow has been given

284 OPC monitors parliamentary proceedings and, if notice of motion to disallow is given, will update the Register and alert the lodging agency as necessary. It is important to take such matters seriously. If a notice of motion is passed, or taken to have passed, the effect of disallowance is:

- (a) to repeal the instrument or provision immediately, that is, from the day and time of disallowance (LA s 45(1)); and
- (b) to revive any instrument, law or provision repealed by the instrument or provision unless the repealed instrument or provision had sunsetted under Part 4 of Chapter 3 of the LA (s 45(2) and 45(3)); and
- (c) to extend the restrictions on remaking the disallowed instrument or provision for 6 months after the day of disallowance (LA s 48).

285 Consequently, if a House has not yet voted on a disallowance motion, the responsible Minister should be briefed quickly on the issues and options. It may be possible for the responsible Minister to resolve the situation by:

- (a) responding with and, if appropriate, tabling additional information such as a replacement or supplementary explanatory statement (see paragraph 269); or
- (b) giving an undertaking to review or change how an instrument operates, or to change drafting, consultation or other practices.

286 Agencies should also prepare for the possibility of disallowance as swift action may be required. For example, it may be necessary to do some or all of the following:

- (a) notify people who rely on the instrument for authority to act (particularly if it is a matter that could go to court or involves public money);
- (b) get legal advice on other legislation that may be revived or amended as a result of the disallowance;
- (c) prepare one or more compilations to reflect the revised text of the instrument and any other affected legislation (see [Chapter 5](#)).

287 Finally, if an undertaking is given, agencies should ensure that it is implemented and provide feedback to this effect through, for example, subsequent explanatory statements if relevant. Prompt action should be taken because scrutiny bodies often include details of both new and outstanding undertakings in their periodic reports to the Parliament.

Restrictions on remaking instruments before and after tabling

288 Sometimes problems are identified with the text of an instrument soon after it has been lodged for registration. If so, the instrument may be amended or repealed, but a second instrument that is the same in substance as the first instrument cannot be made before the first instrument is tabled, and for a period after its tabling, without the Parliament’s approval.

289 Irrespective of whether a legislative instrument is disallowable, once it has been registered a second instrument that is the same in substance as the first instrument cannot be made for a period of 7 calendar days from the following ([LA](#) s 46):

- (a) if it was tabled on the same day in both Houses—the day of tabling;
- (b) if it was tabled on different days in both Houses—the later of those days;
- (c) if it was not tabled in both Houses—the last day when the instrument could have been tabled under section 38 of the [LA](#).

290 If a legislative instrument is disallowable, longer timeframes may apply. If notice of a motion to disallow is given, an instrument, or a provision of the instrument, that is the same in substance as the original instrument or provision cannot be made while the original instrument or provision can be disallowed ([LA](#) s 47). If the original instrument or provision is disallowed, an instrument or provision the same in substance cannot be made for 6 months after the day of disallowance ([LA](#) s 48).

291 It is important to note that the restrictions on remaking are broadly expressed, and focus on whether an instrument or provision is “the same in substance” as an earlier

instrument or provision. This usually requires an assessment of whether it has “in large measure, though not in all details, the same effect” as an earlier instrument or provision³⁰.

292 It is also important to comply with the restrictions on remaking. An instrument or provision that is remade in breach of these restrictions has no effect, and can never take effect even if it is registered and tabled (LA s 46(3), s 47(3) and s 48(4)).

293 Consequently, if there is a compelling need to remake an instrument or provision before these restrictions end, there are only two practical options for resolving the situation:

- (a) remake the instrument or provision with changes, so that it is not the same in substance as the earlier instrument or provision, or
- (b) seek a resolution by the Parliament approving the remaking of the instrument or provision (see LA s 46(1) and s 48(2)).

294 In either case, agencies are strongly advised to obtain legal advice on whether the proposed new instrument or provision is the same in substance as the earlier one. Also, to consider the possibility that the Parliament may disallow the new instrument or provision based on a broader view of the concept than that adopted by the courts to date.

295 If a Parliamentary resolution for remaking is obtained and an instrument or provision is remade, the resolution date and other details should be noted in the explanatory statement. This will ensure that the details are readily available if the validity of remaking is questioned at any point in the future.

296 Similarly, if a decision is taken to remake an instrument or provision shortly after the restrictions have ended, the relevant date calculations should be included in the explanatory statement. This is particularly important if the new instrument is disallowable or the earlier instrument was disallowed.

³⁰ See *Victorian Chamber of Manufactures v Commonwealth (Women’s Employment Regulations)* [1943] HCA 21; (1943) 67 CLR 347 (13 August 1943), and *Perrett v Attorney-General of the Commonwealth of Australia* [2015] FCA 834

Chapter 10—Sunsetting

Main points

- Many legislative instruments are automatically repealed after 10 years—this process is known as sunsetting and is governed by Part 4 of Chapter 3 of the [LA](#).
- Early action on sunsetting is more likely to achieve a smooth process and a better outcome than leaving things until the last minute.
- Sunset dates can only be deferred or rolled over in limited circumstances, and this requires the consent of the Attorney-General, the Parliament or both.
- In many cases, a replacement instrument will need to be made and registered before an instrument sunsets to ensure continuity of the law.

Background

297 This chapter describes the framework for sunsetting established by the [LA](#), and highlights key considerations in the drafting and registration of instruments. It should be read in conjunction with:

- (a) the AGD Guide to Managing Sunsetting of Legislative Instruments³¹; and
- (b) the Sunsetting Checklist in Appendix A of this Handbook; and
- (c) the Australian Government’s deregulation policies.

298 The automatic repeal or sunsetting of older legislative instruments presents a unique opportunity for the Australian Government to reduce red tape, deliver clearer laws, and align existing legislation with current government policy.

299 Sunsetting may, at first, require some agencies to change the way they manage their legislation but it is an important process. Its purpose is to “ensure that legislative instruments are kept up-to-date and only remain in force for as long as they are needed” ([LA](#) s 49).

300 As a general guide, agencies should plan ahead and if appropriate negotiate minor changes to sunset dates. If an instrument is no longer required, it should be repealed (see paragraph 197). Otherwise the instrument should be reviewed (see paragraph 320). If the review establishes that the instrument is still required, the instrument should be:

- (a) remade and registered before the instrument sunsets to ensure continuity of the law (see paragraph 340); or
- (b) rolled over (if appropriate, see paragraph 331).

301 Agencies should prepare for sunsetting well in advance of an instrument’s sunset date as the process of reviewing an instrument, and acting on review recommendations, can be

³¹ See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

lengthy. The process may also attract significant Parliamentary and public scrutiny, even if no changes are recommended.

302 For further guidance on preparation for sunseting and the risks of inaction, see the AGD Guide to Managing Sunseting of Legislative Instruments³² or contact AGD (sunsetting@ag.gov.au or (02) 6141 2736).

How sunseting works

303 Part 4 of Chapter 3 of the [LA](#) provides for:

- (a) regulations and other legislative instruments to sunset on predictable dates, either 1 April or 1 October each year; and
- (b) a list of sunseting instruments to be tabled 18 months before each sunset date.

304 Although it is possible to defer (“roll over”) an instrument’s sunset date or to get a permanent exemption from sunseting, this is only practicable in limited circumstances. Further guidance on such matters is provided in paragraphs 306, 323 and 331.

305 Even if a legislative instrument is exempt from sunseting, it may still need to be reviewed periodically to comply with specific statutory obligations in the enabling legislation and with the Australian Government’s best practice regulation requirements. For more information about these requirements, please contact OBPR (helpdesk-obpr@pmc.gov.au or (02) 6271 6270).

What instruments are exempt from sunseting

306 Under the [LA](#), all legislative instruments are subject to sunseting unless they are exempt from sunseting. Exemptions may be set out in section 54 of the [LA](#), sections 11 and 12 of the [LEOMR](#), or the enabling legislation.

307 When an instrument is lodged for registration, the lodging agency is asked to certify a range of information including whether an exemption from sunseting applies and, if so, what legislation authorises the exemption.

308 Most exemptions are straightforward, and nominate a specific enabling provision such as instruments made under section 123 of the *XYZ Act 2013*. However, other exemptions are more generic and some can be difficult to apply, particularly if they refer to the purpose of an instrument.

309 If there is any doubt about whether an instrument is exempt from sunseting, the rule-making agency should seek legal advice and consider the potential risks to government policy if the instrument is not listed for sunseting. There will be significant legal and other consequences if, for example, an agency claims that an instrument is exempt but a court later finds that the instrument was not exempt and has sunsetted.

³² See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

310 The formal policy approval of both the responsible Minister and the Attorney-General is required to create a new exemption from sunseting. Proposals for a new exemption should be discussed in the first instance with AGD (adminlaw@ag.gov.au or (02) 6141 2736).

When instruments sunset

311 The rules for calculating default sunset dates were changed in 2012 to make them simpler to calculate, and to deliver a more even workload.

312 Special rules apply for the many older legislative instruments registered in bulk on 1 January 2005. These now sunset based on their year of making, with the older instruments sunseting first. The key dates are set out in subsection 50(2) of the [LA](#), and are as follows:

Year of making	Sunseting date	Year of making	Sunseting date
Before 1930	1 April 2015	1980-89	1 April 2018
1930-39	1 October 2015	1990-94	1 October 2018
1940-49	1 April 2016	1995-99	1 April 2019
1950-59	1 October 2016	2000-02	1 October 2019
1960-69	1 April 2017	2003-04	1 April 2020
1970-79	1 October 2017	2005	Not applicable

313 All other legislative instruments sunset on the first 1 April or 1 October falling on or after the 10th anniversary of their registration ([LA](#) s 50(1)), unless their enabling legislation provides otherwise. To illustrate:

Date of registration	Default sunseting date
31 March 2005	1 April 2015
1 April 2005	1 April 2015
2 April 2005	1 October 2015

Advance notice of sunseting

314 The Attorney-General is required to table a list of all the instruments due to sunset on a given sunset date. The list must be tabled in each House of the Parliament on the first sitting day within 18 months before that date ([LA](#) s 52). The exact date of tabling will vary, but some of the key dates are as follows:

Sunseting date	List tabling date
1 October 2017	First sitting day on or after 1 April 2016
1 April 2018	First sitting day on or after 1 October 2016
1 October 2018	First sitting day on or after 1 April 2017

315 Tabled lists are available on the Register³³. Newly tabled lists are available on the website as soon as possible after tabling in accordance with the current Guidelines for the Presentation of Documents to the Parliament³⁴. In accordance with subsection 52(3) of the

³³ See <https://www.legislation.gov.au/Content/SunsettingLists>

³⁴ See <https://www.dpmc.gov.au/resource-centre/government/guidelines-presentation-documents-parliament-0>

LA, OPC also provides the tabled list to each Departmental Secretary for distribution to each rule-maker within the portfolio as soon as practicable after the list is tabled.

316 OPC also provides a list of instruments due to sunset in 6 and 12 months to all agency Legislation Liaison Officers. This list is not tabled in each House of the Parliament but is provided for information only. This is so agencies can take into account any changes that have occurred since lists of instruments due to sunset in 18 months were tabled in each House of Parliament and to assist agencies in managing their sunseting instruments to ensure the timely remaking or repeal of sunseting instruments.

317 Up-to-date information on all the instruments due to sunset within 18 months³⁵ and details of a particular instrument's current sunset date can be obtained from the Register website. Agency-specific reports on instruments that are not yet repealed can also be accessed, customised and downloaded to Microsoft Excel through the secure lodgement facility <https://lodge.legislation.gov.au>.

What to do about sunseting

318 Agencies that take early action on sunseting are more likely to achieve a smooth process and better outcomes than agencies that leave things until the last minute. Early action is particularly desirable if:

- (a) a change in sunset date may be appropriate e.g. to facilitate a thematic review of multiple instruments; or
- (b) an instrument's inclusion in a tabled sunseting list is likely to cause significant parliamentary or public concern; or
- (c) a parliamentary rollover or significant policy change is likely to be sought; or
- (d) an agency is responsible for a large number of sunseting instruments.

319 Many instruments are "one-off" instruments that have been created for a particular event or period, or for the sole purpose of doing something to another instrument (e.g. commencing, amending or repealing the other instrument). These instruments are usually easy to identify and may be subject to automatic repeal. If not, they should be repealed once they have done their job. For further guidance on repeal processes, see paragraph 197.

320 If an instrument is still required, or if there is doubt about whether it is still required, the rule-making agency should undertake a more in-depth review of whether the instrument is "fit for purpose". For further guidance on how to prepare for and review sunseting instruments, see the Sunseting Checklist in Appendix A of this Handbook, the AGD Guide to Managing Sunseting of Legislative Instruments³⁶ or contact AGD (sunseting@ag.gov.au or (02) 6141 2736).

321 Agencies planning reviews should also have regard to the Australian Government's best practice regulation requirements. For further guidance on these requirements, please contact OBPR (helpdesk-obpr@pmc.gov.au or (02) 6271 6270).

³⁵ See <https://www.legislation.gov.au/Browse/BySunsetDate/LegislativeInstruments/SunsetingSoon>

³⁶ See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

322 An instrument that is “fit for purpose” can be considered for a parliamentary rollover (see paragraphs 331 to 338). Otherwise, the instrument should be remade (see paragraphs 339 to 351).

Scope to negotiate minor changes in sunset date

323 The LA recognises that minor changes to default sunset dates may be appropriate in certain circumstances. It authorises the Attorney-General to:

- (a) align the sunset dates for related instruments to facilitate thematic review; and
- (b) defer sunseting by up to 12 months if statutory conditions are met.

Declaration of thematic review under section 51A of the LA

324 As a result of amendments of the LA made in 2012, it is now possible to align the sunset dates for a group of instruments to facilitate a thematic review. This process may involve bringing forward some dates, and pushing others back by up to 5 years. It is not limited to instruments made under a single Act or administered by a single portfolio— instruments can be grouped on some other basis, such as a particular treaty or industry.

325 Safeguards have been enacted to ensure that this mechanism is used to support and not undermine the purpose of sunseting. Among other things, the LA requires:

- (a) the responsible rule-maker to apply to the Attorney-General (LA s 51A(1)); and
- (b) the Attorney-General to be satisfied that all the instruments to be reviewed are or will be subject to a single review (LA s 51A(1)(a)(ii)); and
- (c) the Attorney-General to make a declaration—this declaration is a legislative instrument that must be registered (LA s 51A(1)) and is subject to disallowance.

326 A declaration of thematic review cannot revive an instrument that has already sunsetted. Also, if a declaration is disallowed, any instrument named in the declaration that has passed its previous sunset date is repealed immediately (from the day and time of disallowance). Consequently, any application for a declaration should be made well in advance of the earliest sunset date.

327 For practical guidance on and assistance with section 51A applications, see the AGD Guide to Managing Sunseting of Legislative Instruments³⁷ or contact AGD (sunsetting@ag.gov.au or (02) 6141 2736).

Attorney-General’s certificate under section 51 of the LA

328 If the Attorney-General is satisfied that the statutory conditions in section 51 of the LA are met, an instrument’s sunset date can be deferred for either 6 or 12 months by means of a certificate made under that section. In terms of process, the LA requires:

³⁷ See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

- (a) the responsible rule-maker to apply to the Attorney-General in writing; and
- (b) the Attorney-General to be satisfied that the instrument meets the statutory conditions; and
- (c) the Attorney-General to make a certificate that includes a statement of reasons for the issue of the certificate—this certificate must be registered (LA s 51(3)) but is exempt from disallowance (LEOMR s 10 item 19).

329 A certificate cannot revive an instrument that has already sunsetted, so it must be prepared, signed, and registered before the relevant sunset date to be effective.

330 For practical guidance on and assistance with applications for section 51 certificates, see the AGD Guide to Managing Sunsetting Instruments³⁸ or contact AGD (sunsetting@ag.gov.au or (02) 6141 2736).

Parliamentary rollovers

331 If an instrument is listed for sunseting or is mentioned in a section 51 certificate, there is a 6-month period during which either House of the Parliament may pass a resolution to roll over the instrument's sunset date for 10 years. The 6-month period is calculated from the day after the list or certificate was tabled (LA s 53(1)).

332 If the resolution is passed within the 6-month period, the instrument's sunset date is deferred for 10 years. There is no requirement to remake, register or table an instrument that has been rolled over and, having already been the subject of parliamentary scrutiny, the instrument is not subject to further scrutiny in the form of disallowance.

333 If the vote is in the negative, or if no vote is taken within the 6-month period, nothing changes and urgent action is required to prepare, make and register a replacement instrument before the existing instrument sunsets. As part of that process, changes to the substance of the instrument may be desirable or important (particularly if the replacement will be subject to disallowance).

If notice of private rollover motion is given

334 OPC monitors parliamentary proceedings and will notify agencies as soon as practicable if an instrument is subject to a motion for a rollover by a Private Member.

When government rollover motion may be appropriate

335 Only Senators and Members can move for a rollover under section 53 of the LA. Consequently, unless the rule-maker is a Minister, it will be necessary for the rule-maker to make the case for a rollover to the responsible Minister. This should be done well in advance of the deadline for rollover motions, because:

- (a) consultation with government and other stakeholders may be necessary or desirable (see paragraph 336); and

³⁸ See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

- (b) both the parliamentary sitting schedule and order of business can be subject to change without notice.

336 Agencies considering a rollover motion should consult AGD before proceeding to ensure that current policy and process requirements have been met. Agencies should also recognise that a rollover may not reduce overall workload compared with remaking an instrument. There could be significant workload and other consequences if, for example:

- (a) a motion is controversial and referred to committee; or
- (b) public uncertainty about the instrument generates campaign correspondence; or
- (c) a motion is unsuccessful and the instrument has to be remade.

337 For further guidance on this matter, see the AGD Guide to Managing Sunsetting Instruments³⁹ or contact AGD (sunsetting@ag.gov.au or (02) 6141 2736).

Tabling of documents for rollover purposes

338 If a document needs to be tabled in anticipation or support of a rollover motion, it cannot be lodged for tabling through OPC. The relevant agency will need to prepare and lodge it in accordance with the current Guidelines for the Presentation of [non-Register] Documents to the Parliament⁴⁰. It may also be appropriate to provide additional courtesy copies to relevant scrutiny bodies.

Remaking of sunseting instruments (if required)

339 A rule-maker who is authorised to make a particular instrument can repeal and remake it, no matter who originally made it. Merely amending an instrument does not reset its sunseting “clock”.

340 To ensure continuity of the law, a new (replacement) instrument must be made and registered before any existing instrument sunsets. Failure to get a replacement instrument made and registered by the sunset date can have significant legal and other consequences (see paragraphs 65 and 66 of this Handbook).

341 In the case of disallowable instruments, a much earlier date of registration is recommended to reduce the potential risks and consequences of disallowance. Disallowance of a replacement instrument or provision may temporarily revive a previous instrument, but cannot prevent that instrument sunseting or revive an instrument that has already sunsetted.

342 It may be tempting for agencies to assume that the process of preparing a new instrument to replace a sunseting instrument will not take very long because necessary provisions already exist. However, it is OPC’s experience that significant time and care is needed to ensure that:

³⁹ See <https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

⁴⁰ See <https://www.dpmc.gov.au/resource-centre/government/guidelines-presentation-documents-parliament-0>

- (a) the new instrument is legally effective, clear and intelligible to anticipated users (see paragraphs 343 to 351 of this Handbook); and
- (b) consultation, regulatory impact and other process requirements are met (see [Chapter 7](#) of this Handbook); and
- (c) the explanatory statement for the instrument meets current legislative and Parliamentary standards (see [Chapter 8](#) of this Handbook).

Drafting of replacement instruments

343 If an agency intends to use OPC’s drafting services to draft a replacement for a particular instrument, OPC would appreciate early instructions that:

- (a) outline the preferred timing, including whether an exposure draft is required to assist consultation; and
- (b) deal with any policy or other changes that are needed (such as deletion of unwanted provisions); and
- (c) confirm that the rest of the instrument is to remain the same in substance—OPC will modernise it without detailed instructions, if and as needed, in consultation with the agency.

344 Irrespective of who drafts it, a new instrument intended to replace a sunseting instrument needs to contain the following to avoid confusion about what is intended and what is in force:

- (a) a new, unique name (e.g. the *Widgets Determination 2017* where 2017 is the year of making);
- (b) an express provision that states when the new instrument is to commence;
- (c) an express provision that clearly identifies and repeals the sunseting instrument or instruments (use of the word “repeal” is important);
- (d) transitional provisions, if and as needed to transition things from being done under the sunseting instrument to the new instrument.

345 Other changes may also be necessary to meet current drafting and publishing standards. The person drafting the instrument should check that each provision in the new instrument is supported by a head of power in current law, and should consider carefully any legal opinions that go to the effect or validity of existing provisions. Care is also needed if a sunseting instrument:

- (a) has enabled the making of another instrument that is still in force; or
- (b) incorporates documents other than Commonwealth Acts or disallowable legislative instruments by reference; or
- (c) is cited in other legislation that is in force; or

- (d) deals with a criminal offence, civil penalty or related enforcement issue; or
- (e) contains gender-specific language.

346 Further information on drafting issues is provided in [Chapter 3](#) of this Handbook.

Scope to remake instruments in bulk by reference

347 It may be possible to remake instruments by reference, that is, without spelling out the full text of each replacement instrument. However, there is no known precedent for this and this approach has significant legal and practical limitations. It is only likely to be appropriate if the instruments to be remade:

- (a) are not likely to be of interest to the Parliament (e.g. because of their technical content); and
- (b) are available on the Register “as amended” without any misdescribed amendments; and
- (c) do not need to be amended substantially as part of the remaking processes.

348 It should be noted that it is generally not possible for a single rule-maker such as a Minister to make a single instrument that remakes every instrument in a portfolio. In the absence of statutory authority, a Minister cannot, for example:

- (a) amend, repeal, or repeal and remake, a regulation or other instrument made by the Governor-General or other rule-maker; or
- (b) repeal and remake one type of instrument (such as a guideline) using another type of instrument (such as a determination).

349 Even with instruments of the same type, separate remaking instruments may be required for disallowable and non-disallowable instruments to avoid making non-disallowable instruments subject to disallowance.

350 Although it may be possible to remake instruments by reference with very minor changes, expert drafting will be required to minimise the risk of unintended consequences if anything more substantial is proposed. This may be particularly important if, for example, the instrument to be remade:

- (a) contains saving or transitional provisions; or
- (b) has been amended but no up-to-date compilation has been registered showing the text as amended; or
- (c) needs to be amended retrospectively, with changes applied to the instrument before its date of remaking.

351 Each remaking instrument must be registered before the relevant sunset date with an explanatory statement that meets all of the requirements for explanatory statements. In

addition, a compilation of each remade instrument that has been amended will also need to be prepared and registered as soon as practicable after the instrument is remade.

If an instrument cannot be remade before it sunsets

352 If an instrument cannot be remade before it sunsets, there are only three options for ensuring or restoring continuity of the law.

353 First, if an urgent and unavoidable issue emerges before the sunset date that prevents an instrument being remade, it may be possible to obtain a minor (6 or 12 month) deferral of its sunset date by an Attorney-General's certificate under section 51 of the [LA](#). For further guidance on section 51 certificates, see paragraph 328.

354 Second, if the original instrument has sunsetted, a replacement instrument should be made as soon as practicable. It might be possible to backdate the commencement to the relevant sunset date (see paragraph 65), but please seek legal advice before attempting to commence an instrument retrospectively. Note also that retrospectivity may attract adverse comment from bodies such as SSCRO (see Principle B of the Committee's scrutiny principles⁴¹).

355 Finally, if a replacement instrument cannot be made retrospectively, an Act of the Parliament may be required to remedy the situation. However, this should only be considered if all other options have been exhausted. For more information on what is involved, see the Legislation Handbook⁴².

356 For assistance with any of these options, please contact OPC by email instrument.instructions@opc.gov.au or contact the [OPC instrument client adviser](#) for your agency.

⁴¹ See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/guidelines/principles

⁴² See <https://www.dpmc.gov.au/resource-centre/government/legislation-handbook>

Appendix A—Sunsetting Checklist

- ☐ Does the instrument pass the fit-for-purpose test (see paragraph 5.2 of the AGD Guide to Managing Sunsetting of Legislative Instruments)?
- ☐ Is the policy of each provision still necessary and appropriate?
- ☐ Is each provision of the instrument supported by an appropriate head of power in the enabling legislation?
The instrument might not explicitly refer to the head of power under which the provision is made. If so, you might need to speak to a drafter in OPC or seek legal advice.
- ☐ Are all references in the instrument to the following still appropriate and correct:
 - references to laws or other instruments;
 - references to persons, organisations or bodies.

This might require checking those references in the laws of the Commonwealth, a State or a Territory, or in instruments made by another person, organisation or body.
- ☐ Does each provision of the instrument meet OPC drafting and publishing standards?
- ☐ Are any application, transitional or savings issues raised by repealing the instrument?
- ☐ If the instrument is not to be remade, has the instrument been repealed?
- ☐ If the instrument is to be remade, have all prerequisites required by the enabling legislation before making the new instrument been complied with?
- ☐ If the instrument is to be remade, does the new instrument have a unique name, and a commencement provision?
- ☐ Have you considered the power to make any instruments that are made under the legislative instrument, and the character of those instruments?
- ☐ Are any consequential amendments required to any other instruments because the instrument is to sunset or be remade?

Further reading

Key legislation

Acts Interpretation Act 1901

Legislation Act 2003

Legislation (Exemptions and Other Matters) Regulation 2015

Legislation Rule 2016

Guidance material

AGD guidance on human rights scrutiny

<http://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/default.aspx>

AGD Guide to Framing Commonwealth Offences, Infringements Notices and Enforcement Powers

<http://www.ag.gov.au/Publications/Pages/GuidetoFramingCommonwealthOffencesInfringementNoticesandEnforcementPowers.aspx>

AGD Guide to Managing Sunsetting of Legislative Instruments

<https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Pages/LegislationAct2003.aspx>

The Australian Government Guide to Regulation

<http://cuttingredtape.gov.au/handbook/australian-government-guide-regulation>

Federal Executive Council Handbook

<https://www.dpmc.gov.au/resource-centre/government/federal-executive-council-handbook-2017>

Guidelines for the Presentation of Documents to the Parliament

<https://www.dpmc.gov.au/resource-centre/government/guidelines-presentation-documents-parliament-0>

Legislation Handbook

<https://www.dpmc.gov.au/resource-centre/government/legislation-handbook>

Legislation Proposal Advice—OPC client advisers list

http://www.opc.gov.au/client_information/docs/Client%20Advisers.pdf

OPC's drafting services: a guide for clients

<http://www.opc.gov.au/about/documents.htm>

OPC Drafting Manuals

http://www.opc.gov.au/about/draft_manuals.htm

OPC Drafting Directions

http://www.opc.gov.au/about/draft_directions.htm

Parliamentary Joint Committee on Human Rights—Guidance Notes and Resources

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources

Senate Standing Committee on Regulations and Ordinances—Committee guidelines

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Guidelines

Useful contacts

Office of Parliamentary Counsel

Instrument drafting services

instrument.instructions@opc.gov.au

or please contact the OPC instrument client adviser for your agency

(http://www.opc.gov.au/client_information/docs/Client%20Advisers.pdf)

Compilations services

lodge@legislation.gov.au

(02) 6120 1350

Sunsetting and repeal of instruments

sunsetting@opc.gov.au

(02) 6120 1350

Registration services and corrections

To lodge documents online, go to:

<https://lodge.legislation.gov.au>

To arrange a log-on or get other help:

lodge@legislation.gov.au

(02) 6120 1350

Print services

printservices@opc.gov.au

Table Offices

House of Representatives

table.office.reps@aph.gov.au

(02) 6277 4800

Senate

table.legislation.sen@aph.gov.au

(02) 6277 3035

Attorney-General's Department

Exemptions from some or all of the LA

adminlaw@ag.gov.au

(02) 6141 2736

Proposals to defer sunseting

sunsetting@ag.gov.au

(02) 6141 2736

Human rights compatibility

humanrights@ag.gov.au

(02) 6141 6666

Criminal Law Policy

crjd.draftbills@ag.gov.au

(02) 6141 2802

Department of the Prime Minister and Cabinet

Office of Best Practice Regulation

helpdesk-obpr@pmc.gov.au

(02) 6271 6270

Office of Deregulation

officeofderegulation@pmc.gov.au

Federal Executive Council Secretariat

exco@pmc.gov.au

(02) 6271 5779

Tabling of non-Register documents

tabling@pmc.gov.au

(02) 6277 7212

Parliamentary committees

Parliamentary Joint Committee on Human Rights

human.rights@aph.gov.au

(02) 6277 3823

Senate Standing Committee on Regulations and Ordinances

RegOrds.Sen@aph.gov.au

(02) 6277 3066

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