

1996-97

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

LEGISLATIVE INSTRUMENTS BILL 1996

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new clauses to be moved on behalf of the Government

(Circulated by authority of the Attorney-General and Minister for Justice,  
the Honourable Daryl Williams AM QC MP)



# AMENDMENTS OF THE LEGISLATIVE INSTRUMENTS BILL 1996

## OUTLINE OF AMENDMENTS

The amendments proposed by the Government will amend the *Legislative Instruments Bill 1996* and through Schedule 4 a number of other Acts.

The purpose of the Bill is set out in the Explanatory Memorandum. The purposes of the amendments are to :

provide a safeguard to ensure that rulemakers are unable to make instruments which disappplies the provisions of the Bill to a subsequent instrument which is, or might be, legislative in character;

continue the exemption provided by the Bill of terms and conditions for persons employed in the public sector, members of the defence forces and members of the Australian Federal Police but at the same time preserving the present provisions for Parliamentary scrutiny and disallowance for some instruments;

extend the capacity to make regulations applying modified or adapted provisions of Disputed Returns under the Commonwealth Electoral Act and in respect of election disputes under the Aboriginal and Torres Strait Islander Commission Act;

continues the exemption from disallowance of a range of instruments made under the provisions of the Migration Act or the Migration Regulations;and

effect various technical and drafting changes.

## FINANCIAL IMPACT STATEMENT

The amendments contain no financial impact.

## NOTES ON AMENDMENTS AND NEW CLAUSES.

### AMENDMENT 1

1. This amendment inserts an additional paragraph - paragraph (d) - into subclause 4(3) to clarify that a person or body may be a rule-maker for the purposes of the Bill, and hence have all the responsibilities for ensuring compliance with the Bill, notwithstanding that that person or body does not actually make the legislative instrument concerned.

### AMENDMENT 2

2. This amendment inserts an additional subclause - subclause 4(A) - into clause 5. Paragraph 5(4)(b) provides a mechanism for an enabling Act or a legislative instrument provision to declare that any instrument made pursuant to it is not a legislative instrument for the purposes of the Bill. In respect of such a declaration in a legislative instrument, this provision would leave it to the responsible Minister, or rule-maker, to determine whether the Bill should apply to a particular instrument or class of instruments.

3. Subclause 5(4A) is being inserted to ensure that if an inappropriate declaration was made it would not be effective. This is achieved by ensuring that effectiveness would only result if any declaration of this nature, in respect of subsequent instruments, was included only with the agreement, in writing, of the Attorney-General. The amendment also requires that any such agreement set out the reasons for so agreeing.

### AMENDMENT 3

4. This amendment is consequential on Amendment 2 and inserts a subclause 44(2A) into the Bill to ensure that any approval by the Attorney-General pursuant to proposed subclause 5(4A) is included in the explanatory material required to be tabled in the Parliament after the making of the legislative instrument containing a declaration of exemption in respect of a future legislative instrument.

### AMENDMENT 4

5. This amendment is also consequential on Amendment 2 that the certificate of the Attorney-General under proposed subsection 5(4A), like a number of other certificates by the Attorney-General under the Bill, is exempt from disallowance.

### AMENDMENT 5

6. This amendment inserts new paragraph 61(8)(ca) to provide a further exemption from the disallowance provisions of the Bill. The amendment exempts from disallowance legislative instruments, other than regulations, made by the Minister for Immigration and Multicultural Affairs under Parts 1, 2 or 9 of the *Migration Act 1958* or under Parts 1, 2 or 5 or Schedules 2 or 6 of the regulations made under the *Migration Act 1958*. Such instruments are currently not subject to disallowance.

7. The amendment meets the Government's policy objective of maintaining the status quo of no disallowance for a range of migration control instruments that might

otherwise be disallowable as a consequence of the enactment of the Bill but does not extend from disallowance the range of instruments to which exemption from disallowance applies.

#### AMENDMENTS 6 and 7

8. These amendments make drafting changes to paragraphs 66(1)(a) and (b) to clarify the confinement of the ambit of the exemption from the sunset provisions of the Bill.

#### AMENDMENTS 8 and 9

9. These amendments correct references in clause 72 and item 8 of Schedule 1 to the title of an Act following a change to its title subsequent to the Bill being introduced.

#### AMENDMENT 10

10. This amendment makes a number of drafting changes to item 14 of Schedule 1 to remove unintended limitations to the range of instruments that are not legislative instruments for the purposes of the Bill. It is to be noted that although the making of such instruments does not require compliance with the provisions of the Bill, the current requirements for tabling and disallowance of some such instruments under the *Defence Act 1903* and the *Public Service Act 1922* are respectively maintained by Amendments (14) and (24) to Schedule 4 of the Bill.

#### AMENDMENTS 11 and 13

11. These amendments insert amendments in Schedule 4 to the *Aboriginal and Torres Strait Islander Commission Act 1989* and *Commonwealth Electoral Act 1918* respectively to enable the making of regulations to provide for the modification or adaptation of the provisions of the Bill for Rules of Court made in respect of electoral disputes.

#### AMENDMENT 12

12. This amendment renumbers new section 46A of the *Acts Interpretation Act 1901* as new section 46AA. The renumbering removes any possible chance of confusion with the former repealed section 46A.

#### AMENDMENT 14

13. This amendment replaces section 58C of the *Defence Act 1903*. New subclauses 58C(1), (2) and (3) ensure that any determinations of terms and conditions made in respect of members of the defence forces are subject to Parliamentary scrutiny and disallowance under new section 46B of the *Acts Interpretation Act 1901* to the same extent as currently applies to such instruments under existing section 46A of that Act.

14. Subclause 58C(4) is a transitional provision to cover existing instruments still subject to completion of the disallowance processes at the change from the application of the old section 46A to the new section 46B.

15. Subclause 58C(5) provides that clause 67 of the Bill, which contains general transitional provisions for instruments not finally dealt with at the commencement of the Bill, does not apply in respect of determinations made under the new provisions.

#### AMENDMENTS 15, 18, 19 and 22

16. These amendments are drafting amendments to clarify that any regulations made to effect any modification or adaptation of the provisions of the Bill in respect of Rules of Court do not permit any modification to the requirements under the Bill for Parliamentary scrutiny and disallowance.

#### AMENDMENTS 16, 17, 20 and 21

17. These amendments are drafting amendments to clarify that the source of the power to make some Rules of Court arises in Acts other than the Acts establishing the Courts concerned.

#### AMENDMENT 23

18. This amendment makes a drafting change.

#### AMENDMENT 24

19. The first of these amendments effects the same type of change in respect of Parliamentary scrutiny and disallowance of public sector determinations made under the *Public Service Act 1922* as the amendments made by Amendment 14 in respect of the *Defence Act 1903*.

20. The other amendment inserts into the *Remuneration Tribunal Act 1973* a modification to the tabling provisions of section 7 of that Act to require that any determination made by the Tribunal is to be provided to the Minister within 7 days of its making. This amendment gives effect to previous undertakings given to the Senate Standing Committee on Regulations and Ordinances to make an appropriate amendment to that Act at the earliest appropriate time.





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