



Australian Government

Attorney-General's Department

Attorney-General's Department Submission

**Senate Standing Committee for the Scrutiny of
Delegated Legislation Inquiry into exemption of
delegated legislation from parliamentary oversight**

June 2020

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Terms of reference for the inquiry into exemption of delegated legislation from parliamentary oversight

On 30 April 2020, the Senate Standing Committee for the Scrutiny of Delegated Legislation agreed to conduct an own motion inquiry into the exemption of executive-made laws from Parliamentary oversight, with particular regard to:

- a) the appropriateness and adequacy of the existing framework for exempting delegated legislation from Parliamentary oversight, including:
 - i. the amount and nature of delegated legislation currently exempt from Parliamentary oversight;
 - ii. the grounds upon which delegated legislation is currently made exempt from Parliamentary oversight;
 - iii. the manner in which delegated legislation is currently made exempt from Parliamentary oversight; and
 - iv. the appropriateness of exempting delegated legislation made in times of emergency, including in response to the COVID-19 pandemic, from Parliamentary oversight; and
- b) whether the existing framework for exempting delegated legislation from Parliamentary oversight should be amended, and, if so, how including:
 - i. the grounds upon which it is appropriate to exempt delegated legislation from Parliamentary oversight; and
 - ii. the options available to ensure appropriate and adequate Parliamentary oversight of delegated legislation in times of emergency.

Attorney-General's Department submission to the inquiry into exemption of delegated legislation from parliamentary oversight

Introduction

The Attorney-General's Department welcomes the opportunity to make this submission to the Committee's inquiry. The submission focuses on Parliamentary oversight of delegated legislation, or legislative instruments, under the disallowance regime set out in section 42 of the [Legislation Act 2003](#) (Legislation Act). It covers the operation of that regime, the mechanisms through which legislative instruments may be exempted from disallowance, and reasons that may support exemption.

Disallowance provides an essential and effective mechanism for Parliamentary scrutiny, and plays a vital role in ensuring the accountability of the Executive to Parliament. However, Parliament has recognised that disallowance is not appropriate in a number of cases including: where matters are appropriate for Executive control, where the proposed provisions are based on extensive consultation, scientific or technical considerations, and where government action needs to be decisive and certain. Alternative mechanisms to ensure transparency and accountability are also more suitable where there is a need for immediate government action in emergency situations, such as in relation to the recent bushfires and the COVID-19 pandemic. In these circumstances and in other situations where government action needs to be decisive and certain, vulnerability to disallowance would introduce an element of uncertainty and the potential for inconsistent and inequitable application of government policy to individuals, business and the community.

While disallowance is a significant mechanism for Parliamentary oversight of delegated legislation, there are other means by which delegated legislation can be scrutinised by Parliament, including by parliamentary committees and individual members of Parliament. The broader electoral cycle also provides an opportunity for monitoring and consideration of Executive action.

The Department considers that the framework for exempting delegated legislation from the disallowance regime is effective. All exemptions from disallowance must be set out in primary legislation, or regulations under the Legislation Act which are themselves subject to Parliamentary oversight. Where Parliament considers it appropriate to exempt legislative instruments from disallowance, these exceptions should be carefully confined and supported by robust justification.

The disallowance of delegated legislation

The role of delegated legislation

Legislative instruments are laws made by the Executive under the authority of an Act of Parliament, not directly by Parliament itself. They determine or alter the content of the law, rather than determining particular cases or circumstances in which the law applies; and affect a privilege or interest, impose an obligation, create a right, or vary or remove an obligation or right.¹ They allow the detail of Commonwealth law to be developed and maintained by the Executive within the confines of principles established by Acts of Parliament. They take a multitude of forms including regulations made by the Governor-General, rules, orders, ordinances, declarations and certificates.

Legislative instruments are used in a variety of circumstances and represent diverse instances of Executive action, ranging from rules of broad application and significance, to detailed specifications applying in particular circumstances. Some are integral to the structure of the legislative frameworks to which they belong and are made following months of consultation and development, others must be made and commence quickly in order to be effective.

¹ Subsection 8(4) of the [Legislation Act 2003](#).

Since 2005, all Commonwealth legislative instruments have been subject to the registration, publication and scrutiny requirements of the Legislation Act. The overwhelming majority of legislative instruments currently in force were subject to disallowance when they were made (see [Current legislative instruments exempt from disallowance](#), below).

All legislative instruments must be tabled in Parliament, regardless of whether they are subject to disallowance. Failure to meet the tabling requirements of the Legislation Act results in immediate repeal.²

Legislative history

The framework for disallowance of legislative instruments is set out in Chapter 3, Part 2 of the Legislation Act. The Legislation Act, originally passed as the [Legislative Instruments Act 2003](#), established a comprehensive regime for the registration, tabling, scrutiny and sunseting of Commonwealth legislative instruments. It was developed in response to the [Administrative Review Council's](#) 1992 report, [Rule Making by Commonwealth Agencies](#), which described the previous framework governing Commonwealth legislative instruments as 'patchy, dated and obscure'. The Legislative Instruments Act substantially re-enacted those parts of Part XII and section 46A of the [Acts Interpretation Act 1901](#) that related to regulations and disallowable instruments, extending disallowance to all legislative instruments.

The [2008 Review of the Legislative Instruments Act 2003](#) (2008 Review) found that the Act had been successful in providing a repository of legislative instruments, improving public access to them and facilitating parliamentary scrutiny. The Review committee also made a number of recommendations to improve the operation and clarity of legislative frameworks for Commonwealth Acts and instruments. The [Acts and Instruments \(Framework Reform\) Act 2015](#) (AIFR Act) was enacted, in part, to implement recommendations from the Review.

The AIFR Act made substantial amendments to the Legislative Instruments Act, renaming it the Legislation Act and establishing a single framework covering registration, publishing and management of all Commonwealth Acts and instruments. The AIFR Act included some refinements and clarifications of the disallowance mechanism (including repeals to reduce the number of disallowance regimes in operation), but did not substantially alter its operation.

The [2017 Review of the Sunsetting Framework under the Legislation Act 2003](#) found that the sunseting framework is generally fulfilling its stated purpose of ensuring that legislative instruments are up to date and only in force for so long as they are needed. The [Legislation Amendment \(Sunsetting Review and Other Measures\) Act 2018](#) implemented recommendations of the Review to streamline the sunseting framework and related provisions of the Legislation Act.

The disallowance mechanism

Under section 42 of the Legislation Act, a notice of motion to disallow a legislative instrument may be placed before either House of Parliament within 15 sitting days of that instrument being tabled in Parliament. If the motion is passed, the instrument is repealed from that time.

All legislative instruments are subject to disallowance unless exempted by law.

The framework for exempting delegated legislation from disallowance

A legislative instrument may be exempted from disallowance as set out in section 44 of the Legislation Act: by relationship to an intergovernmental scheme, prescription by regulations made under the Legislation Act, or statement in primary legislation. As exemptions must be set out in

² Subsection 38(3) of the Legislation Act.

primary legislation, or regulations that are themselves subject to disallowance, all proposals for exemptions from disallowance are subject to Parliamentary oversight.³

Subsection 44(1) creates a specific exemption for instruments implementing intergovernmental arrangements between the Commonwealth and States or Territories. It provides that, where an enabling provision authorises a legislative instrument, or provision of a legislative instrument, to be made for the purposes of an intergovernmental body or scheme between the Commonwealth and one or more States or Territories, the instrument will be exempt from disallowance. This exemption acknowledges that the Commonwealth Parliament should not be able to unilaterally disallow instruments that are part of a multilateral scheme.⁴

Paragraph 44(2)(b) allows regulations to be made prescribing legislative instruments that are not subject to the disallowance regime in section 42. The [Legislation \(Exemptions and Other Matters\) Regulation 2015](#) (LEOMR) lists legislative instruments by reference to their inclusion in a class (section 9), or their enabling provision (section 10). There have been no additions to the exemptions provided by the LEOMR since its commencement.⁵

Under paragraph 44(2)(a), another Act can provide that section 42 does not apply in relation to a legislative instrument or a particular provision of a legislative instrument. As the creation of exemptions in primary legislation does not require amendment of the Legislation Act, the Attorney-General does not have a formal policy approval role in relation to these exemptions. However, the Office of Parliamentary Counsel (OPC) routinely refers draft legislation that would exclude the operation of section 42 to the Attorney-General's Department for scrutiny. The Department consults with the instructing agency in these cases to ensure that appropriate justification exists and is set out in the Bill's explanatory memorandum.

Current legislative instruments exempt from disallowance

Of the 31,132 legislative instruments currently in force, 1,391 were marked as being exempt from disallowance when they were lodged on the Federal Register of Legislation (FRL).⁶

This means that 29,741, or almost 96% of, current instruments were subject to disallowance when they were made.

Source of exemption	Total number of legislative instruments	Exempt under subsection 44(1)	Exempt under other primary legislation	Exempt under LEOMR
Number of instruments	31, 132	1,391 (total exempt instruments)		
		49 Instruments currently in force that are exempt from disallowance	620 Instruments currently in force that are exempt from disallowance	722 Instruments currently in force that are exempt from disallowance

³ Where subsection 44(1) or regulations made for the purposes of paragraph 44(2)(b) would otherwise operate to exempt an instrument from disallowance, Parliament retains the ability to re-apply disallowance through express provision in the relevant enabling legislation or another Act.

⁴ [Explanatory Memorandum](#) to the [Legislative Instruments Bill 2003](#).

⁵ Section 10 of the LEOMR has been amended three times since it came into effect: the [Biosecurity \(Consequential Amendments and Transitional Provisions\) Regulation 2016](#) removed a table item; the [Legislation \(Exemptions and Other Matters\) Amendment \(Sunsetting and Disallowance Exemptions\) Regulation 2016](#) inserted table item 23A to provide consistency in relation to exemptions that already applied under section 44(1) (intergovernmental scheme – see [Explanatory Statement](#)) and the [Legislation \(Exemptions and Other Matters\) Amendment \(2019 Measures No. 1\) Regulations 2019](#) removed an item.

⁶ As at 19 May 2020. The figures in this section rely primarily on information submitted by administering agencies when lodging instruments for registration on the Federal Register of Legislation (FRL). This figure does not include 6,564 Tariff Concession Orders and Revocation Orders, which despite appearing on the FRL, are no longer considered to be legislative in character.

		solely on the basis of subsection 44(1).	under a provision of another Act. ⁷	solely on the basis of exemptions in the LEOMR. ⁸
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Exempt instruments within the Attorney-General's portfolio

There are 66 legislative instruments within the Attorney-General's portfolio that are exempt from disallowance. Details of these instruments are set out at [Attachment 1](#).

The adequacy of the existing framework

It is the Department's view that exemptions from disallowance should only be created where exceptional policy circumstances exist. Where other agencies seek to create exemptions from disallowance the Department provides advice in relation to the policy intention of the disallowance regime and examples of established rationales that have been used to support exemption from disallowance. It is important to recognise that legislative instruments vary considerably in subject matter and operation and as such there is no exhaustive list of circumstances in which exemption from disallowance may be appropriate. Ultimately, the application of the disallowance regime is a question for Parliament.

Examples of justification for exemption from disallowance

The following table is derived from Appendix D to the 2008 Review of the Legislative Instruments Act. The Review committee considered the circumstances in which Parliament had exempted instruments from all or part of the Legislative Instruments Act. The Review committee noted that these established grounds were broadly consistent with the circumstances in which stakeholders who made submissions to the 2008 Review considered that exemptions would be justified.

The Department has updated the table with current examples, and to include additional grounds on which Parliament has exempted legislative instruments from disallowance since the 2008 Review.

	Reason	Example
1.	There is an alternate parliamentary role in relation to that type of instrument.	<p>A standard made under section 122 of the <i>Broadcasting Services Act 1992</i>, which can be directly amended by a House of Parliament.</p> <p>Determinations establishing special accounts under section 78 of the <i>Public Governance, Performance and Accountability Act 2013</i>. Such determinations are exempt from disallowance under section 42 of the <i>Legislation Act</i>, but are instead subject to disallowance within five sitting days of tabling, and do not commence until after that period has expired.</p>
2.	The rule-making process should or needs to be separated from the political process.	<p>A determination of a listed human disease under section 42 of the <i>Biosecurity Act 2015</i>. Listing a human disease is a technical and scientific decision based on whether human biosecurity risk is able to be satisfactorily managed. Subjecting these determinations to disallowance could undermine the decision-making process, frustrate risk management</p>

⁷ Some instruments in this category would also be exempt through the operation of subsection 44(1) or exemptions established by or continued in the LEOMR.

⁸ The table of exemptions contained in subsection 44(2) of the then *Legislative Instruments Act* was repealed by the *AIFR Act* and replaced by equivalent tables in sections 9 and 10 of the *LEOMR*. The [Legislative Instruments Regulations 2004](#) were repealed at the same time.

	Reason	Example
		processes, and lead to inadequate management of biosecurity risks.
3.	The instrument is an internal management tool for Government and an integral part of the government's relationship with government agencies and employees.	A direction issued under section 21 of the <i>Public Service Act 1999</i> , which empowers the Prime Minister to issue general directions in writing to agency heads relating to the management and leadership of APS employees.
4.	The instrument is central to machinery of government arrangements or electoral matters.	Substituted reference orders under section 19B of the <i>Acts Interpretation Act 1901</i> regarding references in legislation to Ministers or Departments that are no longer current.
5.	The instrument is to operate from the time it is made and commercial (business) certainty will be adversely affected if it can be disallowed at a later date.	<p>An instrument made under section 18 of the <i>Payment Systems (Regulation) Act 1998</i>, which empowers the Reserve Bank to make standards for participants in designated payment systems.</p> <p>Instruments made under the <i>Radiocommunications Act 1992</i> which relate to the procedures for allocating spectrum licenses.</p> <p>An exemption from disallowance for this reason may also be appropriate where the instrument is intended to cover once-only transitional arrangements, such as when a public sector body is changing governance structures.</p>
6.	The instrument is intended to remain within Executive control.	A direction under section 29(7) of the <i>Crimes (Currency) Act 1981</i> . The instrument is a direction from a Minister (the Treasurer) to a person stipulating how an article that is condemned by a Court as forfeited to the Commonwealth is to be dealt with or disposed of by public authorities and is appropriate for Executive control.
7.	The exemption is in response to a parliamentary recommendation.	Instruments under section 126DA of the <i>Customs Act 1901</i> , which provides for the CEO of Customs to determine certain information technology standards for electronic communication with Customs. The Senate Legal and Constitutional Committee said that as the requirements are highly technical there is no real benefit in disallowance.
8.	The instrument is part of an intergovernmental scheme.	A declaration made under section 31 of the <i>Trans-Tasman Mutual Recognition Act 1997</i> . These instruments support an intergovernmental agreement between Australia and New Zealand. Disallowance of these instruments would frustrate the purpose of the mutual recognition scheme.
9.	The instrument is required under an international treaty or convention.	An instrument made under sections 8, 9, 10 or 11 of the <i>Customs Tariff (Anti-Dumping) Act 1975</i> , relating to the enforcement of Australia's anti-dumping countervailing duties, which Australia must adhere to as a member of the World Trade Organisation. Subjecting these instruments to disallowance could

	Reason	Example
		affect their enforceability and conflict with Australia's international obligations.
10.	The instrument is critical to ensuring that urgent and decisive action can be taken in situations of emergency or where circumstances are rapidly evolving.	Human biosecurity emergency declarations made under section 475 of the <i>Biosecurity Act 2015</i> . Emergency declarations should be made in accordance with an assessment of the relevant human biosecurity risks. If an emergency declaration was disallowed, nationally significant human biosecurity risks might go unmanaged and the Commonwealth would be unable to take the fast and urgent action necessary to manage a threat or harm to Australia's human health.
11.	The exemption will provide certainty in meeting specific security needs.	A Proclamation made under section 3A or 3B of the <i>Control of Naval Waters Act 1918</i> , which allow for access control to certain vessels or naval waters to be invoked at times of heightened security.
12.	Other reason.	If a new exemption may be appropriate, for example, because a new class of instrument is being created, agencies are asked to first discuss those reasons with AGD before submitting a formal application for amendment of LEOMR or the relevant primary legislation. The formal policy approval of the responsible Minister and the Attorney-General is required for new exemptions that are included in the LEOMR.

Whether the existing framework should be amended

Parliamentary scrutiny of delegated legislation, including through the disallowance framework, is a fundamental feature of the Legislation Act.

The diversity of legislative instruments and the need to ensure their effective operation support the criteria for exemptions being maintained as policy, rather than being set out in legislation. The department notes that a similar approach has been taken in relation to exemptions from sunseting.⁹ All exemptions are subject to parliamentary scrutiny through the passage of primary legislation or the disallowance process.

Any proposal to exempt a legislative instrument from disallowance should be carefully confined in scope and canvass alternative safeguards. Self-ceasing enabling provisions and explicit requirements as to the purpose and operation of COVID-19 legislative instruments provide good examples of such safeguards and limitations.

No significant issues around the operation of the disallowance regime in the Legislation Act have been raised with the Department. Discussions with other agencies indicate that the regime is operating effectively, and that Parliamentary scrutiny committees' requests for further information on particular instruments are given appropriate consideration.

The Department considers that the existing framework in section 44 of the Legislation Act is operating effectively.

⁹ See 9.2.5 and Recommendation 32 of the [Report on the Operation of the Sunsetting Provisions in the Legislation Act 2003](#).

Further review of individual exemptions

We note that section 59(3) of the Legislation Act requires a review of all aspects of the operation of the Legislation Act, and any related matters specified by the Attorney-General, to be undertaken five years after the commencement of the AIFR Act reforms. The review body is to be established between 5 March and 5 June 2021, and must report before 5 June 2022. The 2021 review will provide an opportunity for thorough consideration of existing exemptions and the operation of the disallowance regime more broadly.

Attachment 1

Exempt Instruments within the Attorney-General's Portfolio

Instruments	Source of exemption from disallowance	Reason
<ol style="list-style-type: none"> <i>Acts Interpretation Substituted Reference Order 2017</i> <i>Acts Interpretation Amendment Substituted Reference Order 2019</i> 	<i>Legislation (Exemptions and Other Matters) Regulation 2015 s 10 item 1</i>	<p>The <i>Acts Interpretation Substituted Reference Order 2017</i> and the <i>Acts Interpretation Amendment Substituted Reference Order 2019</i> are made under section 19B of the <i>Acts Interpretation Act 1901</i>.</p> <p>Substituted reference orders make clear how provisions of Acts and instruments should be read when machinery of government changes have occurred. They are critical to the machinery of government and are appropriate for Executive control, as they implement Administrative Arrangement Orders and certainty as to their effect is important for the correct interpretation of legislation.</p>
<ol style="list-style-type: none"> <i>Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019</i> 	<i>Legislation (Exemptions and Other Matters) Regulation 2015 s 9 item 2</i>	<p>The <i>Crimes (Currency) (Disposal of Condemned Forfeited Articles) Direction 2019</i> is a direction from a Minister to a person or body. The purpose of the instrument is to provide directions as to how an article that is condemned by a Court as forfeited to the Commonwealth is to be dealt with by public authorities. As such it is not appropriate that it be subject to disallowance.</p>

Instruments	Source of exemption from disallowance	Reason
<p>4. <i>Fair Work (Registered Organisations) Declaration 2010</i></p>	<p><i>Fair Work (Registered Organisations) Act 2009</i> s 158A(3)</p>	<p>This declaration was made under s 158A(2) of the <i>Fair Work (Registered Organisations) Act 2009</i> (the RO Act) to declare a later day by which an organisation registered under the RO Act may apply to transfer members of a state-based organisation counterpart to its coverage under s 158A(1). The declaration of a later day was intended to provide the Australian Government with the opportunity to consider whether regulations might be made to prescribe federal and state-based organisations as counterparts for the purposes of the RO Act, and to permit time for consultation. Given the declaration was intended as a mechanism to facilitate consultation, and its effect was minor and technical in nature, it was not appropriate to be subject to disallowance.</p>
<p>5. <i>Fair Work (State Declarations - employers not to be national system employers) Endorsement 2009</i></p> <p>6. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2010 (No. 1)</i></p> <p>7. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2010 (No. 2)</i></p> <p>8. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2011 (No. 1)</i></p> <p>9. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2012 (No. 1)</i></p> <p>10. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2012 (No. 2)</i></p> <p>11. <i>Fair Work (State Declarations - employer not to be a national system employer) Endorsement 2012 (No. 3)</i></p>	<p><i>Fair Work Act 2009</i> s 14(5)</p>	<p>These Endorsements are made under subsection 14(4) of the <i>Fair Work Act 2009</i>. Subsection 14(4) is the mechanism by which the Commonwealth can endorse a state or territory's declaration that certain entities established for a public or local government purpose are not a national system employer. The endorsement reflects the state or territory's expressed intention that the state/territory industrial relations system apply. As such, it is not appropriate that it be subject to disallowance.</p>

Instruments	Source of exemption from disallowance	Reason
<p>12. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2013 (No. 1)</i></p> <p>13. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2013 (No. 2)</i></p> <p>14. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2013 (No. 3)</i></p> <p>15. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2014 (No. 1)</i></p> <p>16. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2014 (No. 2)</i></p> <p>17. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2014 (No. 3)</i></p> <p>18. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2014 (No. 4)</i></p> <p>19. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2015 (No. 1)</i></p> <p>20. <i>Fair Work (State Declarations - employer not to be national system employer) Endorsement 2015 (No. 2)</i></p> <p>21. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2015 (No. 3)</i></p> <p>22. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2016 (No. 1)</i></p> <p>23. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2016 (No. 2)</i></p>		

Instruments	Source of exemption from disallowance	Reason
<p>24. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2016 (No. 3)</i></p> <p>25. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2017 (No. 1)</i></p> <p>26. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2018 (No.2)</i></p> <p>27. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2018 (No. 1)</i></p> <p>28. <i>Fair Work (State Declarations — employer not to be national system employer) Endorsement 2019 (No.1)</i></p>		
<p>29. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2005</i></p> <p>30. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2006</i></p> <p>31. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2007</i></p> <p>32. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2008</i></p> <p>33. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2009</i></p> <p>34. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2010</i></p> <p>35. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2011</i></p> <p>36. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2012</i></p> <p>37. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2013</i></p> <p>38. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2014</i></p>	<p><i>Legislation (Exemptions and Other Matters) Regulation 2015 s 9 item 3</i></p>	<p>The superannuation instruments enabled by the <i>Family Law (Superannuation) Regulations 2001</i> are technical instruments prepared with the assistance of the Australian Government Actuary.</p> <p>Exposure of superannuation instruments to disallowance could cause commercial uncertainty, as well as uncertainty for superannuation fund members and providers.</p>

Instruments	Source of exemption from disallowance	Reason
<p>39. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2015</i></p> <p>40. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2016</i></p> <p>41. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2017</i></p> <p>42. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2018</i></p> <p>43. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2019</i></p> <p>44. <i>Family Law (Superannuation) (Interest Rate for Adjustment Period) Determination 2020</i></p> <p>45. <i>Family Law (Superannuation) (Provision of Information –NSW Parliamentary Contributory Superannuation Scheme) Determination 2010</i></p> <p>46. <i>Family Law (Superannuation) (Provision of Information –NSW Police Association Superannuation Scheme) Determination 2010</i></p> <p>47. <i>Family Law (Superannuation) (Provision of Information –NSW Police Superannuation Scheme) Determination 2010</i></p> <p>48. <i>Family Law (Superannuation) (Provision of Information –NSW State Authorities Superannuation Scheme) Determination 2010</i></p> <p>49. <i>Family Law (Superannuation) (Provision of Information –NSW State Superannuation Scheme) Determination 2010</i></p> <p>50. <i>Family Law (Superannuation) (Provision of Information –Parliamentary Contributory Superannuation Scheme) Determination 2005</i></p> <p>51. <i>Family Law (Superannuation) (Provision of Information –Victorian Pension Schemes) Determination 2008</i></p> <p>52. <i>Family Law (Superannuation) (Provision of Information –Woolworths Group Superannuation Scheme) Determination 2005</i></p>		

Instruments	Source of exemption from disallowance	Reason
<p>53. <i>Family Law (Superannuation) (Provision of Information –NSW State Authorities Non-contributory Superannuation Scheme) Determination 2010</i></p> <p>54. <i>Family Law (Superannuation) (Retirement Age – SA Metropolitan Fire Service Superannuation Fund) Approval 2005</i></p> <p>55. <i>Family Law (Superannuation – Provision of Information: Governors-General Pension Scheme) Determination 2013</i></p> <p>56. <i>Family Law (Superannuation – Provision of Information: Judges' Pensions Act Scheme) Determination 2013</i></p>		
<p>57. <i>Legislative Instruments (Deferral of Sunsetting—Radiocommunications Instruments) Certificate 2013</i></p> <p>58. <i>Legislative Instruments (Deferral of Sunsetting—Legislative Instruments Regulations) Certificate 2015</i></p> <p>59. <i>Legislative Instruments (Deferral of Sunsetting—Quarantine Instruments) Certificate 2015</i></p> <p>60. <i>Legislation (Deferral of Sunsetting—Electronic Transactions Regulations) Certificate 2019</i></p> <p>61. <i>Legislation (Deferral of Sunsetting—Export Control Instruments) Certificate 2019</i></p> <p>62. <i>Legislation (Deferral of Sunsetting—Student Assistance Regulations) Certificate 2020</i></p> <p>63. <i>Legislation (Deferral of Sunsetting—Automotive Transformation Scheme Instruments) Certificate 2020</i></p>	<p><i>Legislation Act 2003 s 51(4)</i></p>	<p>Certificates of deferral are issued by the Attorney-General to delay the sunsetting of particular legislative instruments for a strictly limited period of time.</p> <p>A certificate of deferral is exempt from disallowance if it defers the sunsetting day of an instrument by up to 12 months, given the time limited nature of the deferral and practical ramifications related to continuity of law.</p> <p>However a certificate of deferral for 18 or 24 months is subject to disallowance. This is because although neither category of certificate alters the content of the law, the extension of a law's operation by 18 or 24 months is a more significant matter that should be subject to Parliamentary scrutiny. This reflects Recommendation 11 of the Report on the Operation of the Sunsetting Provisions in the Legislation Act 2003.</p> <p>Where a certificate of deferral for six or 12 months is amended to further delay sunsetting for a total of 18 or 24 months, the amending certificate will be treated as being subject to disallowance.</p>

Instruments	Source of exemption from disallowance	Reason
64. <i>Personal Property Securities (Migration Time and Registration Commencement Time) Determination</i>	<i>Personal Property Securities Act 2009 s 306(6)</i>	At the time the <i>Personal Property Securities Act 2009</i> (PPS Act) was passed, it was unclear when the build of the online Personal Property Securities Register, established under the PPS Act, would be complete. Allowing the commencement time of the Register and migration of data from other existing registers to be determined by legislative instrument and within Executive control ensured the Register could only commence when it was deemed to be operational and not before such time. The Determination itself has no ongoing operation, as it was spent following the later of the two dates that it specified.
65. <i>Safety, Rehabilitation and Compensation Directions 2019</i>	<i>Legislation (Exemptions and Other Matters) Regulation 2015 s 9 item 2</i>	The <i>Safety, Rehabilitation and Compensation Directions 2019</i> are made under sections 89D and 101 of the <i>Safety, Rehabilitation and Compensation Act 1988</i> (SRC Act). Under this instrument, the Minister gives directions to the Safety, Rehabilitation and Compensation Commission with respect to the performance of certain functions and the exercise of certain powers under the SRC Act. These are matters intended to be under Executive control.

Instruments	Source of exemption from disallowance	Reason
66. <i>Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)</i>	<i>Legislation (Exemptions and Other Matters) Regulation 2015 s 9 item 2</i>	The <i>Seafarers Safety Rehabilitation and Compensation Directions 2006 (1)</i> is a Ministerial direction made under section 107 of the <i>Seafarers Rehabilitation and Compensation Act 1992</i> . The instrument requires the Seacare Authority to amend its Exemption Guidelines so that when an employer is able to demonstrate that workers' compensation cover will be provided to its employees under another Australian workers' compensation scheme, at a cost lower than is available under the Seacare Scheme, this would constitute a primary factor in determining an application by that employer for an exemption from the Seafarers Act. As it is a Ministerial direction to a body, it is appropriate for exemption from disallowance so that it remains within Executive control.