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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**LEGISLATIVE INSTRUMENTS AMENDMENT
(SUNSETTING) BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Robert McClelland MP)

LEGISLATIVE INSTRUMENTS AMENDMENT (SUNSETTING) BILL 2011

GENERAL OUTLINE

1. This Bill amends the *Legislative Instruments Act 2003* (LIA), which provides general rules for the making, registration and sunseting of legislative instruments.
2. The policy intention of the LIA is that legislative instruments remain in force for 10 years after they made, but are subject to review before the end of that period. However, the current wording of section 50 of the LIA has the legal effect that instruments with retrospective commencement can sunset less than 10 years after they are made or, in some cases, sunset before they are made (because they need to operate longer than 10 years into the past). This minor amendment to the LIA addresses this issue by providing that the instrument remains in force for 10 years following registration on FRLI.
3. This change will achieve the dual policy aim of allowing instruments 10 years of operation from the time the rule-maker registers an instrument on FRLI and ensuring that regulation is reviewed on a regular basis. Regular review of legislation assists in achieving clearer laws.

Financial impact statement

4. The proposed Bill will not have any significant financial impact.

NOTES ON CLAUSES

Clause 1– Short title

1. This clause provides for the Act to be cited as the *Legislative Instruments Amendment Act 2011*.

Clause 2– Commencement

2. This clause provides that the Act will commence on the day after it receives Royal Assent.

Clause 3– Schedule(s)

3. This clause provides that the Schedule to the Bill will amend each Act set out in that Schedule in accordance with the provisions set out in the Schedule.

SCHEDULE 1 – MAIN AMENDMENTS

Legislative Instruments Act 2003

Item 1 – Subsection 4(1) (At the end of the definition of *commencing day*)

1. Item 1 adds a note to the definition of “commencing day” which clarifies that the relevant date is 1 January 2005. This change has no substantive effect on the legislation. It is being made to make the Act easier to use and make it clear on the face of the legislation on which date the Act commenced.

Item 2 – Paragraph 50(4)(b)

Consistency of Terminology

2. Item 1 amends paragraph 50(4)(b) so that it reads “day of commencement” rather than “date of commencement”. This change has no substantive effect on the legislation. It is being made to make the terminology of sub-section 50(4) consistent with the proposed sub-section (7) and the rest of the section.

3. This Item will also insert a number of headings to the various sub-sections in section 50. These headings do not alter the content of the law. However, they do provide more clarity for users of the Act as to which sub-section determines the sunset rules for various kinds of legislative instruments. This is intended to make the Act more accessible and user friendly.

Item 3 – At the end of section 50

New rule for the sunset of retrospectively commencing legislative instruments

4. Item 3 will add a new sub-section (7) at the end of section 50 of the LIA. It will provide that, where a legislative instrument (or a provision of a legislative instrument) commences before the day on which it is registered, references in section 50 to a day of *commencement* are to be read as a reference to a day of *registration*.

5. The practical effect of this change will be that calculation of the sunset date for legislative instruments which commence retrospectively will begin from their date of *registration* on the Federal Register of Legislative Instruments rather than their day of *commencement*. Similarly, where some, but not all, provisions of a legislative instrument commence retrospectively, the sunset date for those retrospectively commencing provisions will be calculated from the day of *registration* and not *commencement*.

6. As the law currently stands, a legislative instrument that commences retrospectively can sunset less than 10 years after it is made. Some instruments have already sunset and others are due to sunset prior to the originally anticipated start of sunset in 2015. This amendment will have the effect of preventing the sunset of any instruments (which have not already sunset) prior to the expected commencement of sunset in 2015.

7. In addition, this amendment would also ensure that all legislative instruments operate for 10 years from registration before sunset. This will have the benefit of ensuring that the original policy intention of the LIA, namely that LIs be periodically reviewed, is realised for all retrospectively commencing LIs, including those made after 2015.

Item 4 – Application

8. Item 4 is an avoidance of doubt provision. It ensures that the amendments apply only to those retrospectively commencing legislative instruments which were still in force (i.e. had not yet sunset) on the day after the Act receives Royal Assent.