



Acts Interpretation Amendment (Legislative Instruments) Bill 2005

Moira Coombs
Law and Bills Digest Section

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Acts Interpretation Amendment (Legislative Instruments) Bill 2005

Date Introduced: 23 June 2005

House: Senate

Portfolio: Attorney-General

Commencement: Sections 1 to 3 of the Act commence on assent, schedule 1 items commence retrospectively from 1 January 2005.

Purpose

The purpose of the Bill is to introduce a new section 15AE to the *Acts Interpretation Act 1901* which defines what is meant by a provision of a law that either describes an instrument as a legislative instrument or as not being a legislative instrument.

Background

The *Legislative Instruments Act 2003* (LIA) was assented to on 17 December 2003.¹ The LIA commenced on 1 January 2005.

The purpose of the *Legislative Instruments Act 2003* was to establish a regime to reform and manage procedures for the making, scrutiny and publication of Commonwealth legislative instruments by

- establishing a Federal Register of Legislative Instruments
- encouraging rule-makers to undertake appropriate consultation
- encouraging high standards in drafting legislative instruments to promote their legal effectiveness, clarity and their intelligibility to users
- providing public access to legislative instruments
- establishing improved mechanisms for Parliamentary scrutiny of legislative instruments
- establishing ‘sunsetting’ mechanisms to ensure periodic review of legislative instruments and if they no longer have a continuing purpose, to repeal them.²

All legislative instruments are now caught by the LIA unless they are *either* declared not to be legislative instruments or listed in the table appearing in section 7 of the LIA or in the regulations. Other legislative instruments may fall within the definition of section 6 of the LIA but be exempt from parliamentary scrutiny if they appear in the table in section 44 or in the regulations.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

If an instrument is a legislative instrument for the purposes of the LIA, the instrument will be registered on the Federal Register of Legislative Instruments. The instruments will be publicly available. They will then be subject to the provisions of the LIA relating to parliamentary scrutiny. All legislative instruments will be tabled and subject to disallowance procedures (unless exempt) and to sunseting procedures (unless exempt).

Prior to 2003, regulations were subject to parliamentary scrutiny and disallowance under Part XII of the *Acts Interpretation Act 1901*. Other instruments could be declared to be disallowable instruments in accordance with section 46A of the *Acts Interpretation Act 1901*. Section 46A has now been repealed by the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* and Part XII of the *Acts Interpretation Act 1901* has been substantially repealed to accord with the changes brought about by the *Legislative Instruments Act 2003*.

Acts Interpretation Act 1901

The purpose of an Acts Interpretation Act is to assist in ‘the interpretation of words that appear in many Acts, or to remove the need for repetition of common provisions relating to commencement dates, computation of time and gender inclusive language.’³ All jurisdictions in Australia have an interpretation act and in the case of the Commonwealth, that act is the *Acts Interpretation Act 1901*.

To avoid such repetition of words or terms, Acts Interpretation Acts define the word or term concerned thereby removing the need to define it each time it occurs in a piece of legislation. By placing a definition in the Acts Interpretation Act, there is no need to repeat the definition in each piece of legislation but rather include an indication as to whether an instrument is a legislative instrument or not.

Since the commencement of the *Legislative Instruments Act 2003* in 2005, certain legislation has indicated whether a particular legislative instrument is, or is not, an instrument for the purposes of the *Legislative Instruments Act 2003*.

Acts Interpretation Amendment (Legislative Instruments) Bill 2005

Amendments are proposed to the *Acts Interpretation Act 1901* to simplify the language that must be used to identify an instrument as being either a legislative instrument or as not being a legislative instrument. Since the commencement of the LIA, a longer form of words has been used in statutes. The form of words usually employed in the case of legislative instruments is along the lines of section 19 of the *Superannuation Act 2005*, which says:

A determination under item 3 or 5 of the table in subsection (2) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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As the Explanatory Memorandum points out, simplified drafting will mean that legislation need only say something along the lines of ‘...the Minister may, by legislative instrument, determine...’⁴

Main Provisions

Schedule 1 Item 1 introduces a **new subsection 15AE(1)** to Part IV of the *Acts Interpretation Act 1901* to define what is meant by instruments being described as legislative instruments in provisions of a law. **New subsection 15AE (1)** provides that the legislative instrument must be in writing and is expressed to be a legislative instrument for the purposes of that Act. **New subsection 15AE (2)** clarifies that describing something as a legislative instrument does not mean it is of a legislative character.

Characteristics of an ‘instrument’:

- Instruments may have a legislative character, an administrative character or contain elements of both.
- An instrument may be described as a ‘legislative instrument’ and *may* actually have a legislative character
- Or, an instrument may be described as a ‘legislative instrument’ and *may not* necessarily have a legislative character
- However for the purposes of the Act’s registration, consultation, parliamentary scrutiny and sunseting regimes, if an instrument is *described* as a ‘legislative instrument’ then it will be *treated* as a legislative instrument under the Act.

For instruments described in legislation as not being legislative instruments, **new subsection 15AE (3)** provides that they will not be legislative instruments for the purposes of the LIA. However, that does not mean that the instrument may not be of a legislative character (**new subsection 15AE(4)**).

If a legislative instrument is so described, no inferences can be drawn from the fact that other instruments in the same piece of legislation or in other laws may be described as legislative instruments or as not being legislative instruments (**new subsection 15AE(5)**).

Items 2-5 amend subsections 46(1), 46AA(1), 46B(2) and paragraph 46B(1)(a) of the *Acts Interpretation Act 1901*. The provisions relate to non-legislative instruments and resolutions and how they are treated under that Act. This bill seeks to amend the occurrences of ‘within the meaning of’ in those provisions to ‘for the purposes of’ for

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consistency with new section 15 AE. Sections 46, 46AA and 46B were all new provisions inserted into the *Acts Interpretation Act 1901* by *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* and that commenced immediately after the commencement of the provisions of the LIA Act.

Endnotes

- 1 See [Legislative Instrument Bill 2003](#), Bills Digest No 26, 2003–04 and [Legislative Instruments \(Transitional Provisions and Consequential Amendments\) Bill 2003](#), Bills Digest No. 54, 2003–04.
- 2 Legislative Instruments Bill 2003, Bills Digest No. 26, 2003–04, at p. 1.
- 3 385–185 Use of Interpretation Acts, Halsburys Laws of Australia, Butterworths Online.
- 4 Explanatory Memorandum, p. 3.

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