

TERMS OF REFERENCE – REVIEW OF THE LEGISLATIVE INSTRUMENTS ACT 2003

Scope and timing of review

Section 59 of the *Legislative Instruments Act 2003* (LIA) provides for a review of the LIA.

Subsection 59(1) provides that the Attorney-General must appoint persons to a body to review the operation of the LIA by 31 March 2008.

Subsection 59(3) provides that the body must review all aspects of the operation of the Act and any related matters specified by the Attorney-General.

Subsection 59(4) provides that the body must give the Attorney-General a written report on the review before 31 March 2009.

Subsection 59(5) provides that the Attorney-General must cause the report to be laid before each House of Parliament within 6 sitting days of the House after the Attorney-General receives the report.

Review body

Mr Anthony Blunn AO, Mr Ian Govey and Professor John McMillan have been appointed to the Legislative Instruments Act Review Committee (the Committee).

Secretariat

The Committee will be supported by a small secretariat from the Attorney-General's Department reporting to the Committee.

Consultation

The review will require a broad consultation process given that the LIA applies to all government rule-making and aims to improve public and business access to subordinate legislation and legislative instruments.

TERMS OF REFERENCE – REVIEW OF THE LEGISLATIVE INSTRUMENTS ACT 2003

Terms of reference

In accordance with subsection 59(3) of the *Legislative Instruments Act 2003* (LIA), I, Robert McClelland, issue the following terms of reference.

The review is to consider and report on:

- the extent to which the objectives listed in section 3 of the LIA have been realised
- factors, if any, which have limited achievement of the LIA's objectives
- the extent to which the objectives of the LIA are still appropriate
- how performance against those objectives might be improved.

The review should consider the recommendations of the Senate Standing Committee on Regulations and Ordinances in its October 2003 report on the Legislative Instruments Bill 2003 being:

- whether Parliament should be able to disallow legislative instruments which give effect to or amend a national scheme of legislation
- the operation of the consultation provisions in the LIA and the regulatory impact process, and
- appropriate ways in which incorporated material might be made accessible.

The review should also consider recommendations 7.11 and 7.26 of the Rethinking Regulation (Banks) report of January 2006, proposing amendment of the LIA:

- to include requirements for good regulatory process, and
- to provide for a 5 year rather than 10 year sunset clause following implementation.

Having regard to the first three years of operation of the LIA, the Committee should consider:

- the appropriateness of the definition of a legislative instrument

TERMS OF REFERENCE – REVIEW OF THE LEGISLATIVE INSTRUMENTS ACT 2003

- the relationship between the LIA and the *Administrative Decisions (Judicial Review) Act 1977*
- the use of non-legislative instruments to commence or amend legislative instruments
- the appropriateness of exemptions from registration, disallowance and sunseting and whether those exemptions are applied consistently to instruments of a similar nature
- the appropriateness of provisions providing for retrospective commencement of instruments
- the requirements of the LIA relating to the compilation of legislative instruments, including the timeliness and quality of compilations provided by rule-makers
- the restrictions on remaking instruments or provisions within instruments until a certain amount of time has passed since tabling and disallowance
- means of managing and recording instruments found to be legally ineffective, including instruments that have been made incorrectly, found by a court or tribunal to be invalid in whole or part, or have been repealed.

Section 3 of the LIA provides that the object of the LIA is to provide a comprehensive regime for the management of Commonwealth legislative instruments by:

- establishing the Federal Register of Legislative Instruments as a repository of Commonwealth legislative instruments, explanatory statements and compilations
- encouraging rule-makers to undertake appropriate consultation before making legislative instruments
- encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users
- improving public access to legislative instruments
- establishing improved mechanisms for Parliamentary scrutiny of legislative instruments, and
- establishing mechanisms to ensure that legislative instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.