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# **ACT legislation register — outline of requirements for notification of legislative instruments**

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Prepared by the Parliamentary Counsel's Office

This document can also be accessed at the PCO website:  
<http://www.pco.act.gov.au/pages/notifications/notifications.htm>

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# Introduction

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## Legislation Act establishes register

The ACT legislation register was established by the *Legislation Act 2001* on 12 September 2001. The *Legislation Act 2001*, section 18 provides for the parliamentary counsel to establish and maintain a register of Acts and statutory instruments. The register must be kept electronically. The contents of the register must, as far as practicable, be freely accessible at all times on an approved web site. The approved web site is accessible at the following web address:

[www.legislation.act.gov.au](http://www.legislation.act.gov.au)

The register and the approved web site are maintained by the ACT Parliamentary Counsel's Office (PCO).

The register has 2 main functions—

- to make authorised versions of new and up-to-date ACT legislation and legislative material freely accessible on the internet
- to provide a mechanism for notifying new laws electronically. (Notifying new laws on the register replaced the previous system of notifying in the printed government Gazette.)

# The notification process

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## Notification of legislative instruments on the ACT legislation register

This document sets out the broad requirements and procedures for notification of legislative instruments under the *Legislation Act 2001* and the *Legislation Regulation 2003*. The guidelines should be read in conjunction with the Act and regulation.

Notification on the register involves both a statement on the register that an instrument has been made and publication on the register of the text of the instrument.

### What must be notified on the register?

Under the Legislation Act, section 12 legislative instruments are—

- subordinate laws
- disallowable instruments
- notifiable instruments (including approved forms)
- commencement notices

Under the Legislation Act, section 19 (1) (k) explanatory statements and regulatory impact statements for subordinate laws and disallowable instruments, although not notified, must be included on the register.

### What type of instrument do I have?

#### Legislative instruments other than appointments

The authorising provision of an Act or instrument under which the legislative instrument is to be notified will usually tell you what type of instrument it is and whether the instrument should be notified. For example, the *Security Industry Act 2003*, section 46 states:

**46 Directions to master licensees about insurance etc**

- (1) The Minister may give written directions to master licensees about the taking out of insurance, or the adoption of risk management plans.
- (2) A direction is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

As shown in the example, the direction is a disallowable instrument to be notified on the legislation register and presented to the Legislative Assembly.

### Instruments of appointment

An instrument of appointment to a statutory position must be notified if the appointment is one to which the Legislation Act, division 19.3.3 applies.

The division consists of provisions previously in the *Statutory Appointments Act 1994*, which has been repealed.

Division 19.3.3 applies to an appointment of a person made by a Minister (or a delegate of a Minister) under an Act to a statutory position (see Legislation Act, section 227 (1)). A statutory position is a position (including as a member of a Territory authority) established under an Act (see s 226).

However, division 19.3.3 **does not apply** to the following appointments (see section 227 (2)):

- an appointment of a **public servant** to a statutory position (whether or not the Act under which the appointment is made requires that the appointee be a public servant);
- an appointment of a person **to act in a statutory position for not longer than 6 months**, unless the appointment is of the person to act in the position for a 2nd or subsequent consecutive period
- an appointment of a person to a statutory position if **the only function of the position is to advise the Minister**.

Before making an appointment to which division 19.3.3 applies, the appropriate Legislative Assembly committee must be consulted (see section 228 (1)). The Minister must not make the appointment until the Minister has received a recommendation from the committee or 30 days have passed since the consultation took place, whichever happens first (see section 228 (3)).

The instrument making, or evidencing, the appointment is a disallowable instrument (see section 229).

### Additional material can be registered

Under the Legislation Act, section 19 additional material may be included on the register.

Instruments of public interest such as the Australian Road Rules have been included on the register as additional material.

### What happens if a legislative instrument is not notified?

A legislative instrument is not enforceable if it is not notified on the legislation register (see Legislation Act, section 62). Responsible agencies should, therefore, ensure that legislative instruments are notified as soon as possible after they are made.

## What is a notification number?

A notification number is a unique number allocated to a legislative instrument by PCO before the instrument is notified on the register. Under the Legislation Act, section 59, legislative instruments must be numbered by the parliamentary counsel as nearly as practicable in the order in which they are notified under the Act. Different kinds of instruments are allocated their own number series, with distinguishing letters to indicate the type of instrument. The numbering series are as follows (where 2011 is the current year):

- SL2013– for subordinate laws;
- DI2013– for disallowable instruments;
- NI2013– for notifiable instruments;
- AF2013– for approved forms (a particular kind of notifiable instrument);
- CN2013– for commencement notices.

The legislative instrument number should not be confused with any other identifying number within the name of the instrument itself.

## Who may request the notification of legislative instruments on the register?

Under the Legislation Act, section 61 all requests for notification are made by the maker of the instrument or an *authorised person*. An *authorised person* for a legislative instrument is—

- for a legislative instrument made or approved by the Executive—a Minister (see Legislation Act, section 61 (a))
- for rules of court or tribunal—the registrar of the court or tribunal (see Legislation Act, section 61 (b))
- for a legislative instrument prescribed under the regulation—a person prescribed under the regulation as the authorised person for the instrument. (see Legislation Act, section 61 (b)) Generally this is the director-general responsible for the provision under which the instrument is made (see the Legislation Regulation, s 10)

Generally the director-general’s function is delegated to the notifications officer in the relevant department.

## Who may request the notification of Acts and Assembly resolutions on the register?

Requests for the notification of Acts and Assembly resolutions that disallow or amend a subordinate law or disallowable instrument must be made by the Speaker. These requests are processed by the Legislative Assembly secretariat in a similar way to requests for notification by legislative instruments.

## When will my instrument commence?

A legislative instrument commences—

- on the day after its notification day if no date is specified (see Legislation Act, s 73 (2) (a))
- if an Act or the instrument provides for a later date or time—on that date or at that time (see Legislation Act, s 73 (2) (b))
- if an Act provides for an earlier or later date or time—on that date or at that time. (see Legislation Act, s 73 (2) (c))
- if the instrument, **under authority given by an Act**, provides for an earlier date or time—on that date or at that time (see Legislation Act, s 73 (2) (d))

If a legislative instrument is notified on a day after the day or time provided for its commencement, the instrument commences on the day after its notification day unless—

- an Act provides for an earlier date or time of commencement (see Legislation Act, section 73 (2) (c) and (3))
- the instrument, **under authority given by an Act**, provides for an earlier day or time (see Legislation Act, section 73 (2) (d) and (3))
- the instrument provides only for the retrospective commencement of a non-prejudicial provision (see Legislation Act, section 76).

## Uncommenced authorising laws—commencement of legislative instrument

If the authorising law for a legislative instrument is uncommenced, the instrument automatically commences when the authorising law commences unless the Legislation Act, section 81 is applied to it (see Legislation Act, section 81 (5)). If the instrument includes such a declaration, the instrument commences on the day after its notification day (see Legislation Act, section 81 (4)).

# Instruments

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## What should the instrument include? Disallowable instruments, notifiable instruments and commencement notices

To meet the requirements for legislative instruments under the *Legislation Regulation 2003*, section 6, disallowable instruments, notifiable instruments and commencement notices must have:

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### 1 a unique name that includes the year the instrument was made

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The name of the instrument should follow, as closely as possible, the name of the Act under which it is made. The name of the instrument should also reflect its subject matter and state the year of its making. It must be given a unique identifying name. If it is not possible or convenient to achieve this by reference to subject matter, an identifying number should be included. The instrument number allocated by PCO is not part of the name and does not, therefore, make the title unique.

#### Example 1

An instrument about the determination of fees under the *Water Resources Act 1998* could be named using the name of the Act as a starting point. For example:

**Water Resources (Fees) Determination 2011 (No )**

If the instrument **only** amends another instrument (that is, there are **no** substantive provisions in the instrument), 'Amendment' should be added to the title. For example:

**Water Resources (Fees) Amendment Determination 2011 (No 1)**

However, if possible, amendments should be avoided. Legislative instruments other than subordinate laws are not generally republished. Amending instruments makes it difficult for people to work out the form of the current provisions of the instrument. Revoking and remaking is therefore generally preferable.

If the determination is the first under the Act for the year, the name should include (No 1) at the end. If another instrument with **exactly the same name** is made in the same year, the instrument should be given an identifying number to make the name of the instrument unique.



## Example 2

An instrument of appointment under the *Vocational Education and Training Act 2001* could be named using a short reference to the name of the Act. For example:

### **Vocational Education and Training (Accreditation and Registration Council) Appointment 2011 (No )**

As this is an instrument of appointment, it is helpful if the word 'appointment' is included in the title. By using the Act name as a starting point for the name of the instrument, all instruments of the same type will be sorted together on the register. It will also be easier to find when searching the register after the instruments are notified.

Any explanatory statements that accompany the instruments should have the correct instrument name on the cover page.

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## **2 the name of the authorising law**

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Include the name of the authorising law under which the instrument is made. Always check the latest republication to ensure the authorising law has not been renamed. The latest version of the republication is easily accessible on the register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

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## **3 the authorising provision of that law**

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Include the authorising provision of the authorising law. Always check the latest republication to ensure the authorising law has not been amended or renumbered. The latest version of the republication is easily accessible on the register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

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## **4 the notification number**

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The instrument must include the notification number as allocated under the Legislation Act, section 59 by PCO. The notification number is inserted below the title. This number is added to the instrument by the notifications officer after the instrument is made.

Any explanatory statements (ESs) that accompany instruments should have the instrument number clearly identified on the ES. Enough space should be left for the notifications officer to add the notification number after the instrument is made. The Standing Committee on Legal Affairs acting as a scrutiny committee may comment on the absence of the instrument number if it is not included in the ES.

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## **5 the name (as signed) and title of each maker of the instrument**

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The instrument must include the name (as signed) and title of each of the maker of the instrument.

Notifications officers add this information to the electronic copy of the instrument before submitting the notification request to PCO.

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## **6 the date the instrument was made**

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The instrument must include the date of making.

Notifications officers add this date to the electronic copy of the instrument before submitting the notification request to PCO.

Any instrument made by the Executive (eg a regulation) is made when it is signed by the second Minister signing (see Legislation Act, section 41 (3))

## **What should the instrument include? Approved forms**

To meet the requirements for legislative instruments under the Legislation Regulation, section 7, approved forms must include:

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### **1 an indication of the form's purpose**

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The approved form must include a brief indication of the form's purpose (usually as a heading).

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### **2 the name of the authorising law**

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Include the name of the authorising law that the form is approved under. Always check the latest republication to ensure the authorising law has not been renamed. The latest version of the republication is easily accessible on the register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

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### **3 the authorising provision of that law**

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Include the authorising provision of the authorising law. Always check the latest republication to ensure the authorising law has not been amended or renumbered. The latest version of the republication is easily accessible on the register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)).

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### **4 the notification number**

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A notification number is allocated under the Legislation Act, section 59 by PCO for each approved form. Each approved form should include this number on the instrument. The notification number is inserted below the indication of the form's purpose. This number is added to the instrument by the notifications officer after the instrument is made.

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**5 the name (as signed) and the title of each person who approved the form**

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This information may be included in either a written statement that accompanies the form or in the approved form itself (see Legislation Regulation, s 7 (2) (b) and (4) (a)).

Notifications officers add this date to the electronic copy of the instrument before submitting the notification request to PCO.

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**6 the date of the form was approved**

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This information may be included in either a written statement that accompanies the form or in the approved form itself (see Legislation Regulation, s 7 (2) (b) and (4) (a)).

Notifications officers add this information to the electronic copy of the instrument before submitting the notification request to PCO.

The approved form may also include:

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**7 a unique number (optional)**

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Each form made under an authorising law can be numbered in a way that gives the form a unique number. This number is separate from the number allocated to all approved forms by PCO.

## **Can I amend an approved form?**

An approved form **cannot** be amended. It should be revoked and reapproved if it is to be changed (see Legislation Act, section 46 (3)).

## **What happens if the name of the instrument does not comply with the legislative requirements?**

Under the Legislation Act, section 60, the parliamentary counsel may correct the name of a legislative instrument before notification. PCO may correct names of instruments that do not comply with the legislative requirements. Notifications officers will be notified when names are corrected.

## **What happens if other parts of the instrument do not comply to the legislative requirements?**

In most cases, if the legislative instrument does not comply with the prescribed legislative requirements, PCO will tell the person making the request that the instrument does not comply. The person making the request can then elect not to proceed with the request (and have the instrument remade so it complies) or to proceed with the request and give reasons why the instrument should be notified. The Legislation Regulation contain requirements designed to ensure that people can

readily locate instruments on the register. The parliamentary counsel has the discretion to notify instruments despite noncompliance with the prescribed requirements. However this power will be exercised only in appropriate cases.

### **Advice on validity of instruments**

Under the Legislation Act, section 61 (2) the parliamentary counsel is required to notify an instrument if the request satisfies the formal requirements of the Legislation Act and regulation. Before notifying an instrument, PCO does not look at the substance of an instrument to check its legal validity. However, if you want to discuss draft instruments before they are made, PCO is happy to assist when we can.

## **Presentation of subordinate laws and disallowable instruments**

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All subordinate laws and disallowable instruments must be presented to the Legislative Assembly within 6 sitting days after their notification day (see Legislation Act, s 64). PCO sends a copy of all notified subordinate laws and disallowable instruments to Publishing Services, Department of Urban Services. Publishing Services is responsible for ensuring presentation of subordinate laws and disallowable instrument to the Assembly.

## Contact details

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If you have any queries or problems about the making, notification or presentation of legislative instruments, please contact any of the following people.

### Legislative Publishing Section

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|-----------------------------------|--------------|-----------|
| <b>Senior Manager</b>             | Ann Moxon    | 620 53782 |
| <b>Manager Notifications Team</b> | Karen Moxon  | 620 53783 |
| <b>Notifications Team</b>         | Josh Stonham | 620 57650 |