Omnibus Repeal Day (Autumn 2014) Bill 2014

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Law and Bills Digest Section

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Date introduced: 19 March 2014
House: House of Representatives
Portfolio: Prime Minister

Commencement: Schedules 1–5, 7, 9 Part 1, and 10 commence the day after Royal Assent. Schedules 6 and 8 commence on the later of 1 July 2014 and the day after Royal Assent. Schedule 9 Part 2 commences on the later of the start of the day after Royal Assent, and immediately after the commencement of Part 2 of Schedule 5 to the Aged Care (Living Longer Living Better) Act 2013 (which is due to commence on 1 July 2014).

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.
Purpose of the Bill

This Bill is part of a package of repeal Bills, which includes the Statute Law Revision Bill (No. 1) 2014 and the Amending Acts 1901 to 1969 Repeal Bill 2014. Some of the amendments are aimed at removing duplication between different levels of government and between different agencies of government. An example of this is amendments which will remove the requirement for aged-care building certification at the federal level. Many of the amendments repeal provisions that have long ceased to have effect; for instance, provisions calling for reviews, which have now been completed. This Digest examines amendments judged material or apparently material.

There are other Bills of a standalone nature that are part of the deregulation exercise such as the Independent National Security Legislation Monitor Repeal Bill 2014 which repeals the National Security Legislation Monitor Act 2010, the Personal Property Securities Amendment (Deregulatory Measures) Bill 2014 and the Australian Charities and Not-for-profits Commission (Repeal) (No. 1) Bill 2014, to mention a few.

Structure of the Bill

The Bill has ten Schedules, reflecting amendments across ten Government portfolios. These are: Agriculture, Communications, Defence, Employment, Environment, Finance, Industry, Prime Minister, Social Services and Treasury.

Committee consideration

Senate Finance and Public Administration Legislation Committee

The provisions of the Bill have been referred to the Senate Finance and Public Administration Committee for inquiry and report by 14 May 2014. Details of the inquiry are here. There have been four submissions to the Committee, and the date for submissions is closed.

The Clerk of the Senate, Dr Laing in her submission reminds the Executive through the Committee of the need to have clear government explanation of Bills such as this Omnibus Bill. She examines the history and purpose of Bills such as Statute Law Revision Bills and Stocktake Bills whose purposes are to tidy up the Statute books by correction of errors, updating legislation and repealing spent legislation. She then points out that this Bill has repeated an error discovered before, in that it seeks to repeal some Appropriation (Parliamentary Departments) Acts that are in fact not spent or exhausted. Dr Laing says in the submission:

> The Department of Finance did not consult the Department of the Senate about the repeal of Appropriation (Parliamentary Departments) Act (No. 1) 2011-2012. The Department of the Senate had already advised Finance that there were unspent appropriations held against that Act. Repeal of that Act was nonetheless included in the Omnibus Repeal Day Bill, indicating that this is yet another method by which the executive can threaten the independence of the Parliament by cutting off access to appropriated funds that are also the subject of agreement at ministerial level.

While an administrative solution has again been found to the problem, the repetition of the same error that occurred in the Statute Stocktake (Appropriations) Act 2013 is disappointing. It indicates that particular vigilance is needed in relation to these apparently innocuous kinds of bills and that this is even more the case where such bills are to be a regular event.

There are also submissions relating to the amendments in communications law that are discussed below.

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills in its Alert Digest No. 4 of 2014 refers to proposed subsection 152BEA(6) of the *Competition and Consumer Act 2010*, inserted by item 3 of Schedule 2 to the Bill, which provides that an instrument made by the Australian Competition and Consumer Commission for the purposes of specifying information that must be included in quarterly reports is not a legislative instrument. The Committee notes that this ‘constitutes a substantive exemption’ from the *Legislative Instruments Act 2003*.

However the Committee notes that there is a detailed explanation and justification given in the Explanatory Memorandum, and therefore the Committee ‘leaves the question of whether the proposed approach is appropriate to the Senate as a whole’.

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights (the Human Rights Committee) seeks further information from the Government about the Bill. The two areas of concern to the Human Rights Committee relate to the amendments to the *Water Act 2007* and the *Aged Care Act 1997*.

The amendment to the *Water Act*, at item 83 of Schedule 5 to the Bill, seeks to repeal section 255AA which requires an independent study to be undertaken before the grant of mining licences on floodplains in the Murray-Darling system. The Human Rights Committee notes:

> to the extent that the removal of the requirement for independent expert study of the impacts of proposed mining operations may increase the risk of unintended diversions or adverse impacts in relation to ground water systems, surface water and ground water flows and water quality, the proposed measure may result in a limitation to the right to water.

The Human Rights Committee seeks clarification from the Parliamentary Secretary as to whether the proposed repeal might limit the right to water.

The Bill also seeks, at Part 2 of Schedule 9, to repeal certification requirements under the *Aged Care Act* and the Human Rights Committee states:

> The Committee notes that the proposed repeal of the Aged Care Act certification standards is due to their ‘in-part’ replication of State and Territory building regulations. However, the explanatory memorandum and statement of compatibility provide no information on what certification standards are not replicated in those regulations, and which, if removed, may result in a reduction in the coverage or quality of residential care service standards.

The Human Rights Committee intends to write to the Parliamentary Secretary to seek his advice as to which *Aged Care Act* standards are not replicated in current state and territory building regulations, and the compatibility of the repeal of any such standards with the right to an adequate standard of living and the right to work.

**Financial implications**

The Explanatory Memorandum deals specifically with the financial impact of only one measure; the repeal of the *Coordinator-General for Remote Indigenous Services Act 2009*. This will save $7.1 million over three years from 2014–15 to 2016–17 due to the cessation of the appointment of a Coordinator-General. The Explanatory Memorandum says that the value of other amendments, specifically those which relate to repeal of Appropriation Acts, will not be known until 1 July 2014 or the commencement of the Bill, whichever is later.

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9. Ibid.
12. Parliamentary Joint Committee on Human Rights, op. cit., p. 11.
Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights can be found at page 79 of the Explanatory Memorandum to the Bill. As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

Key issues and provisions

Agriculture

Schedule 1 — Agriculture

Items 4-9 amend the Regional Forest Agreements Act 2002 to remove references to the Forest and Wood Products Action Agenda, which is no longer current, and references to a review that was conducted and completed in 2004–2005. 16

Communications

Schedule 2 — Communications

Broadcasting Services Act 1992

Item 208 amends section 62 of the Broadcasting Services Act to remove requirements for broadcasting licence holders to notify the Australian Communications and Media Authority (the ACMA) of details of persons who, to the knowledge of the licensee, were in a position to exercise control of the licence at the end of three months after the end of each financial year (items 208 and 210). 17

Publishers and licensees are still required to give notice of the name of each person who was a director (new subsections 62(1), 62(2A) and 62(3)).

Existing section 63 requires licensees and publishers of newspapers to notify the ACMA if they become aware that a person who was not in position to control the licence or newspaper becomes able to do so, or if a person who was in a position of control ceased to be in control. The only change to section 63 is the time to notify these things is extended from five days to ten days (item 215).

The Explanatory Memorandum points out the effect of the amendments are to reduce the duplication of control change notifications. 18

Items 222 and 223 make amendments to the way licensees are to keep accounts by removing the requirements in section 205B of the Broadcasting Services Act to provide audited balance-sheets and profit and loss accounts, if the licensee has been made exempt by the ACMA in a legislative instrument.

Item 224 repeals clause 5H of Schedule 4 of the Act, which requires the Minister to table quarterly reports in Parliament about digital television transmission blackspots until September 2014. According to the Explanatory Memorandum quarterly reports are no longer considered necessary. Part of the reasons for this include that in the last report ACMA was satisfied that broadcasters have met their obligations under the digital television conversion schemes, and Explanatory Memorandum goes on to say:

The report also outlines that viewers residing in remote licence areas, and those residing in digital television terrestrial blackspots in metropolitan and regional licence areas, are eligible to apply to access the Viewer Access Satellite Television (VAST) service. 19

Other amendments to the Radiocommunications Act 1992, Special Broadcasting Service Act 1991, Telecommunications Act 1997 and Telecommunications (Consumer Protection and Service Standards) Act 1999 relate to redundant provisions, spent provisions, and provisions that have never been used, such as the provision enabling the Minister to direct Telstra to take action that ensures Telstra complies with the Consumer Protection and Service Standards Act (section 159 – repealed by item 247).

18. Explanatory Memorandum, op. cit., p. 43.
19. Ibid., p. 44.
Submissions were made to the Senate Finance and Public Administration Legislation Committee by Free TV Australia and News Corp Australia.

Free TV Australia was generally in support of the provisions relating to commercial free-to-air television broadcasters and also made suggestions to enhance the proposed amendments to section 62 of the Broadcasting Services Act. Both submitters suggested that the period for notification of changes to control arrangements should be extended to ten business days, rather than ten calendar days as is currently in the Bill.

Defence

Schedule 3 — Defence

The amendments in the portfolio of Defence are the repeal of three Acts, and a consequential amendment as a result of the repeal of the Approved Defence Projects Protection Act 1947. The other repealed Acts are the Commonwealth and State Housing Agreement (Service Personnel Act) 1990 and the War Service Estates Act 1942.

The Approved Defence Projects Protection Act 1947 creates offences in the event that a person engages in certain conduct against approved defence projects. ‘Approved defence projects’ is widely defined, at section 3 of the Act, to mean:

Any work or undertaking for the testing of long range weapons which is approved by the Minister by notice in the Gazette as an immediate defence project and includes any other work or undertaking, being carried out or to be carried out either within or outside Australia for the defence of Australia or any Territory, which is so approved as an immediate defence project.

According to the Explanatory Memorandum this Act is now redundant as it was operative when the Woomera and Nurrungar facilities were considered to be special undertakings. These facilities or similar activities are now regulated under the Defence Force Regulations 1952 and the Defence Force (Special Undertakings) Act 1952 respectively. Section 27 of the latter Act provides that the Approved Defence Projects Protection Act applies to a special defence undertaking as if that undertaking were an approved defence project within the meaning set out above. This provision is repealed by item 4, Part 2 of Schedule 3.

Employment

Schedule 4 — Employment

This Schedule repeals the whole of the Construction Industry Reform and Development Act 1992. This Act established the Construction Industry Development Council and the Construction Industry Development Agency which were bodies that had various functions such as advising the government and promoting the development and reform of the construction industry. The explanatory material is silent as to where these functions will now be performed, if at all. The Explanatory Memorandum notes that the Agency was abolished in 1995 and there are no current appointments to the Council, so that the legislation is ‘redundant.

Environment

Schedule 5 — Environment

Schedule 5 is made up of Parts 1–4 and makes amendments mainly to the Sea Installations Act 1987 (the SL Act), various Ozone Protection and Synthetic Greenhouse Gas Acts, and the Water Act 2007.

24. Ibid., p. 48. See also the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014, which is currently before the Senate.
27. Explanatory Memorandum, op. cit., p. 49.
The *Sea Installations Levy Act 1987* will be repealed (item 1, part 1 of schedule 5). Due to the repeal of the Sea Installations permit scheme, it is no longer necessary to impose a levy. An explanation as to what is now in place is given in the Explanatory Memorandum as follows:

Since the SI Act was enacted in 1987, environmental protection in Commonwealth marine areas is now predominately covered by the comprehensive regime under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) and, in the Great Barrier Reef Marine Park, the *Great Barrier Reef Marine Park Act 1975* (the GBRMP Act).

A more detailed discussion of the proposed amendments can be found at pages 50–51 of the Explanatory Memorandum.

A general outline of suspected duplication in the environment portfolio was given in evidence to the House of Representatives Standing Committee on the Environment which is relevant to the amendments in this Bill.

Mr Thompson, Deputy Secretary of the Department of the Environment stated:

Recent reviews by the Productivity Commission and others have pointed to the duplication of process between jurisdictions on issues such as development assessment, listing of threatened species, waste management and water management. The department is also conscious of concern about time frames and complexity of environmental regulatory, and for that matter, grant-making, processes.

A Parliamentary Library Briefing on cutting green tape provides a general background of developments in the environment portfolio.

As set out above, the Human Rights Committee has sought further information from the Minister on the repeal of section 255AA of the *Water Act*. The repeal of this provision is justified in the Explanatory Memorandum on the basis that it has been made redundant by the establishment of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, the addition of relevant protections of water resources under the *Environment Protection and Biodiversity Conservation Act 1999*, and the making of the Murray-Darling Basin Plan.

**Prime Minister and Cabinet**

**Schedule 8 — Prime Minister**

Part 1 of this Schedule repeals the *Coordinator-General for Remote Indigenous Services Act 2009* (the RIS Act). The RIS Act establishes the position of Coordinator-General who had functions in the development and delivery of government services and facilities in specified remote communities to a standard broadly comparable with that in non-Indigenous communities of similar size (RIS Act, section 8). The functions came about under the Council of Australian Governments’ National Partnership Agreement on Remote Service Delivery. The Government announced in the 2013–14 *Mid-Year Economic and Fiscal Outlook* that the position of Coordinator-General will cease. According to the Explanatory Memorandum, the role and function of the Coordinator-General concluded on 31 January 2014, and the Department of Prime Minister and Cabinet will

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34. Explanatory Memorandum, op. cit., p. 59.
oversee the National Partnership Agreement on Remote Service Delivery. The Greens have criticised the decision to abolish the Coordinator-General.

**Social Services**

**Schedule 9 — Social Services**

Part 2 will make amendments to the *Aged Care Act 1997* relating to certification of residential aged care services.

The Explanatory Memorandum to the Bill sets out the Government’s purpose for introducing these amendments:

The *Aged Care Act 1997* introduced certification of residential aged care services to promote improvements in the physical quality, safety and amenity of residential aged care services. Certification is not mandatory under the AC Act, however certification allows service providers to charge residents certain accommodation payments, including accommodation bonds. Certified services are also eligible to receive the accommodation supplement or concessional resident supplement. In order to be certified, a service must meet specified standards in relation to their buildings and equipment and the standard of their residential care services.

Certification requirements under the AC Act are duplicative, in that a number of these requirements replicate building regulations administered by state, territory and local governments. Aspects of certification under the AC Act also replicate certain requirements under the Accreditation Standards administered by the Australian Aged Care Quality Agency.

Item 20 of Schedule 9 is significant as it repeals Part 2.6 of the *Aged Care Act*, which sets out the current scheme for the certification of residential care services. In particular, section 38–3 of the *Aged Care Act*, which currently provides for the matters to which regard must be had in establishing whether a residential care service is suitable for certification, will be repealed. The provision currently provides:

**38-3 Suitability of residential care service for certification**

(1) In considering an application, the Secretary must have regard to:

(a) the standard of the buildings and equipment that are being used by the residential care service in providing residential care; and

(b) the standard of the residential care being provided by the residential care service; and

(c) if the applicant has been a provider of aged care—its conduct as such a provider, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing aged care; and

(c) if the applicant has relevant key personnel in common with a person who is or has been an approved provider—the conduct of that person as a provider of aged care, and its compliance with its responsibilities as such a provider and its obligations arising from the receipt of any payments from the Commonwealth for providing that aged care; and

(d) any other matters specified in the Certification Principles.

As set out above, the Human Rights Committee has sought further information on the removal of Commonwealth certification requirements. In particular, the Committee has asked the Parliamentary Secretary to specify whether any current Commonwealth certification standards are not replicated in state and territory provisions.

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38. Explanatory Memorandum, op. cit., p. 64.
41. This section of this Bills Digest was authored by Leah Ferris, Social Policy Section, Parliamentary Library.
42. Explanatory Memorandum, op. cit., p. 67.
The other items are in the main consequential amendments flowing from the proposed repeal of certification, and are adequately explained in the Explanatory Memorandum. 43

**Stakeholder comments**

Aged and Community Services Australia (ACSA) has voiced its support for the amendments:

Adj Prof John G Kelly AM, CEO of Aged and Community Services Australia (ACSA) said that each state and territory has its own planning codes and the only impact of a Commonwealth building certification process was to make more work for aged care providers.

"ACSA presented in its submissions to the National Commission of Audit and the Federal Budget preparation a list of 14 measures to reduce red tape, including the removal of the Commonwealth building certification process," Professor Kelly said.

"This will have no effect on the safety of residents or the care they receive. It was purely a duplication of rigorous processes.

"We are delighted that this has been removed and would encourage the Senate to support Schedule 9 - Social Services which repeals building certification requirements in the Aged Care Act 1997 that duplicate state and territory building regulations." 44

**Treasury**

**Schedule 10 — Treasury**

Schedule 10 has five Parts. Part 1 repeals various redundant and spent Acts.

**Part 2** will repeal provisions relating to the Education Expenses Tax Offset which was replaced by the Schoolkids Bonus in the 2012 Budget. Schedule 9 of the Mineral Resource Rent Tax Repeal and Other Measures Bill 2013 in turn has provisions which seek to repeal the Schoolkids Bonus. 45 The Mineral Resource Rent Tax Repeal and Other Measures Bill failed to pass at the second reading stage in the Senate on 25 March 2014.

**Part 3** will repeal provisions relating to Sugar Industry Reform Program which operated between 1 February 2003 and 30 June 2007. 46 The amendments to the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 are consequential amendments to provisions that have become redundant. Item 27 of Part 3 is a transitional provision which, according to the Explanatory Memorandum, is to ensure that a taxation rule where a grant became taxable in certain circumstances, will continue to apply to sugar industry exit grants paid on or before the commencement of this Part (that is, on the day after Royal Assent). 47

**Parts 4 and 5** will repeal provisions relating to Financial Services Reform roll-over and Superannuation Safety Reform roll-over provisions in the Income Tax Assessment Act 1997. According to the Explanatory Memorandum the subdivisions being repealed became inoperative when the relevant transitional periods ended. 48

**Concluding comments**

Dr Laing’s comments on the need to be vigilant with these ‘apparently innocuous kinds of Bills’ are prescient. 49 It is noted that the Government has introduced standalone Bills for some aspects of its deregulation program, and perhaps a similar approach would be preferable when making amendments in complex areas of law such as environment, social services, communications and Treasury.

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43. Ibid., pp. 67–72.
46. Explanatory Memorandum, op. cit., p. 85.
47. Explanatory Memorandum, op. cit., p. 77.
48. Ibid., pp. 77–78.
49. See page 2 of this Bills Digest.