

# PARLIAMENTARY COUNSEL

## Drafting Direction No. 1.3 Commencement provisions

Note: This Drafting Direction contains references to the “head drafter”. It is a reference to the senior person who is responsible for matters of drafting policy. This form is used to enable the Drafting Directions to be applied in other organisations. In OPC the head drafter is FPC.

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### Contents

<b>Part 1—Introduction</b> .....	4
Reason for OPC’s approach to drafting commencement provisions.....	4
<b>Part 2—Commencement provisions: content</b> .....	4
<b>Division 1—Bills</b> .....	4
Degree of control needed over commencement .....	4
Suitability of Royal Assent commencements .....	5
Retrospectivity etc.....	5
Reliance on legislative instruments.....	5
Proclamation commencement provisions.....	6
Proclamations to be used to fix commencement dates .....	6
Restrictions on deferral.....	6
Background.....	6
The policy .....	6
Scope for multiple proclaimed days.....	7
Proclaimed date dependent on specified event .....	7
Commencements not to be linked to Proclamations .....	8
Other deferred commencements .....	8
<b>Division 2—Instruments</b> .....	8
Significance of the Legislation Act 2003 .....	8
Registration on FRL.....	8
Unsuitability of day of registration commencements .....	9
Retrospectivity etc.....	9
Instrument commencement provisions: general principles.....	9
Overview and context.....	9
Commencement instruments.....	10
Commencements not to be linked to commencement instruments.....	10
<b>Division 3—Bills and instruments</b> .....	11
Reliance on automatic commencement .....	11
Provisions that link commencement to certain events.....	12
Provisions for commencement of Bills or instruments in a “package” .....	12
Provisions that never commence .....	13
Commencement of paragraphs.....	13
References to commencements of Acts or legislative instruments.....	13
References to time.....	14
<b>Part 3—Commencement provisions: form for Bills and instruments</b> .....	14

The basic rules.....	14
Commencement provisions to be set out using table .....	14
Commencement for each provision to be explicitly stated.....	14
Exception—if provisions in separate table items must commence by the same commencement instrument .....	15
Exception—if provisions must commence immediately after or immediately before other provisions of the legislation .....	15
Commencement provisions to be sequential .....	16
Separate rows for provisions of different Schedules.....	16
Standard forms to be followed.....	16
Special rules are included in the table .....	16
Supporting material to be in subsections .....	16
Commencement tables—introductory words for Bills and instruments .....	16
Commencement tables—form of table.....	16
Column 1.....	17
Column 2.....	17
Column 3.....	17
Formatting rules .....	18
References to provisions in the table .....	18
Standard provisions for column 2 of the commencement table.....	18
Standard provisions for Bills.....	18
Standard provisions for instruments.....	22
Special conditions .....	25
Conditional commencement.....	25
“Later of” commencements.....	25
“Later/earlier of” commencements—comparing periods and points of time.....	26
“Later of” commencements and international agreements etc.....	27
Commencement by instrument—standard provisions .....	27
Standard provisions for Bills .....	27
Standard provisions for instruments.....	28
Effect of automatic repeal on preliminary sections .....	29
Multiple days fixed for commencement with some provisions linked .....	29
Date to be fixed dependent on specified event.....	30
Standard note to follow table .....	30
Standard subsection to follow table— allowing completion of column 3 (Date/Details).....	30
Other rules .....	30
When commencement on Royal Assent or day after registration is required for “preliminary” sections.....	30
No special provisions for “same time” issues .....	31
No notes referring to <i>Acts Interpretation Act 1901</i> or <i>Legislation Act 2003</i> .....	31
References to the table and table items .....	31
References to “provisions” .....	31
Defined terms not to be used.....	32
Statute Law Revision ( <i>SLR</i> ) amendments of Acts .....	32
Parliamentary amendments of Bills .....	32
Provisions not covered by standard forms .....	32
Examples.....	32
Relationship with IT system.....	32
<b>Attachment A—Examples of commencement provisions for Bills .....</b>	<b>35</b>
<b>Attachment B—Examples of commencement provisions for instruments .....</b>	<b>41</b>

**Attachment C—Simplified guide to drafting commencement provisions..... 46**

## **Part 1—Introduction**

1 This Drafting Direction sets out the way in which commencement provisions are to be drafted.

2 Commencement clauses are drafted in table format, with the commencement of each provision specified in the order that the provision appears in the draft.

3 As far as possible, the approaches for Bills and for instruments are the same at a conceptual level. However, the different terminology used in, and the different processes relating to, Bills and instruments mean that there are some differences in the commencement provisions that are to be used for Bills and instruments.

4 Part 2 deals with the content of commencement provisions. Division 1 of Part 2 contains material specific to Bills. Division 2 of Part 2 contains material specific to instruments. Division 3 of Part 2 contains material that relates to both Bills and instruments.

5 Attachment A provides examples of Bill commencement provisions.

6 Attachment B provides examples of instrument commencement provisions.

7 A simplified guide to drafting commencement provisions is in Attachment C.

### ***Reason for OPC’s approach to drafting commencement provisions***

8 The table format approach to commencement provisions is used to improve access to commencement information. In the past, the traditional (subsection) form of commencement provision was often “converted” into one or more table forms. This involved working through the subsections of commencement provisions to ascertain commencement details for each provision in a Bill or instrument.

9 A user of legislation trying to find out when a particular provision commenced was faced with the choice of relying on an “external” table or working through the commencement provision themselves.

10 The table format commencement provision also includes a subsection enabling the Date/Details column of the table to be completed as part of the publication of Acts or instruments. This is intended to further improve the useability of commencement provisions.

11 The use of a standard form is intended to aid the development of a consistent statute book and avoid interpretational problems that can arise when commencement information for the same kind of legislation is presented in different forms.

## **Part 2—Commencement provisions: content**

### **Division 1—Bills**

#### ***Degree of control needed over commencement***

12 You should always consider the degree of control that may be needed over the commencement of provisions.

13 If you are asked to draft a Royal Assent commencement or a commencement that is a specified number of days after Royal Assent, consider whether it is likely that your instructors might later seek to try and control the day of Royal Assent (e.g. to give the public advance notice of the commencement date or to allow time for preparatory administrative work). If they might, you should advise them that controlling the day of Royal Assent is not appropriate and that they should choose another commencement option such as by Proclamation.

14 If you are asked to draft a commencement provision that is expressed to be on a specified date, you should advise your instructors that the Government cannot control whether the Parliament will pass the Bill, and it will receive Royal Assent, by that date. Another option, such as by Proclamation, may be more appropriate.

15 If at any time between introduction and passage, you become aware that your instructors may be seeking to exert control over the date of commencement by relying on controlling the date of Royal Assent, you should advise them that this is not appropriate, and that they should consider changing the commencement provision by Parliamentary amendment to allow for commencement by Proclamation.

### ***Suitability of Royal Assent commencements***

#### **Retrospectivity etc.**

16 From time to time various authorities, including courts and at least one Governor-General, have expressed concern about the use of Royal Assent commencements. The concerns relate to issues such as:

- the theoretical retrospectivity of the commencement (under section 3 of the *Acts Interpretation Act 1901*, the Act is treated as in force from the expiration of the last day before the day it is assented to, and is therefore likely to be in force for some hours before it is actually signed by the Governor-General); and
- the operation of an Act during a period of at least several days when a final text of the Act may not be available to the public (this issue may be less significant now that printing of Acts is a relatively unimportant method of disseminating legislation compared with electronic dissemination).

17 For these kinds of reasons, it is often better to avoid a Royal Assent commencement in favour of commencement shortly after Royal Assent (e.g. the day after Royal Assent). In these cases, the preliminary sections of the Act should also commence at the later time (see Example 1 in Attachment A). You should raise these issues with clients who request a Royal Assent commencement, except in cases, such as tax legislation, in which the application of the provisions rather than their commencement is significant to their operation.

#### **Reliance on legislative instruments**

18 In general, you should not include a Royal Assent commencement if the operation of the Act depends on legislative instruments being in force at the commencement of the Act. This is because the legislative instruments cannot be made until Royal Assent has been given. A Royal Assent commencement may be appropriate if, from a policy perspective, the

legislative instruments are able to commence retrospectively and either subsection 12(2) of the *Legislation Act 2003* has been disapplied or, if subsection 12(2) of the *Legislation Act 2003* has not been disapplied, your instructors are not concerned with the effect of that subsection.

## ***Proclamation commencement provisions***

### **Proclamations to be used to fix commencement dates**

19 Proclamations, which are made by the Governor-General, are the preferred method of providing a discretion to fix a commencement date for an Act (albeit a limited discretion having regard to paragraphs 21 to 27 below). Providing for commencement to be fixed by another official (e.g. the Minister by notifiable instrument) is generally unacceptable as a matter of policy.

20 Any request from instructors to confer on a person other than the Governor-General a power to commence an Act, or to confer a power to provide for an Act to commence otherwise than by Proclamation, should be raised with First Parliamentary Counsel.

### **Restrictions on deferral**

#### ***Background***

21 In the late 1980s, certain Senators criticised the Government over the increasing number of Acts that were passed but then not proclaimed to commence, sometimes for years after passage. In response, the Department of the Prime Minister and Cabinet adopted a policy imposing certain restrictions on the use of Proclamation commencement provisions. That policy is reflected in the following paragraphs. Paragraph 6.17 of the *Legislation Handbook* is also relevant.

22 The Senate Standing Committee for the Scrutiny of Bills takes an interest in delayed commencement provisions. The Committee is aware of the policy originally adopted in the late 1980s, and generally looks for an explanation for any commencement provision that departs from the standard required by the policy. If you are asked to draft a Proclamation commencement provision that does not comply with the policy set out below, you should advise your instructors of the Committee's interest, and recommend that they explain any departure from the policy in the Explanatory Memorandum.

#### ***The policy***

23 As a general rule, a restriction should be placed on the period within which an Act, or a provision of an Act, may be proclaimed. The commencement clause should specify either a period, or a date, after Royal Assent after which:

- the Act commences, if it has not already commenced by Proclamation; or
- the Act is taken to be repealed, if a Proclamation has not been made by that time.

(See paragraph 113 for the standard forms for these options.)

24 If the specified period option is chosen, the period should generally not be longer than 6 months. A longer period should be explained in the Explanatory Memorandum.

25 If the specified date option is chosen, there is no restriction on how long commencement may be deferred. However, any substantial deferrals should be explained in the Explanatory Memorandum, and it may in fact be sensible to explain the significance of the specified date whenever this option is used.

26 Note that if the “repeal” option is chosen, there is no limit on the time from Royal Assent to commencement, as long as the Proclamation is made before the end of the specified period or before the specified date.

27 Clauses providing for commencement by Proclamation, but without the restrictions mentioned above, should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain and generally not within the Government’s control (e.g. enactment of complementary State legislation). Commencement provisions of this kind should be explained in the Explanatory Memorandum.

### **Scope for multiple proclaimed days**

28 A Proclamation commencement provision may be expressed to permit a single Proclamation commencing all the affected provisions of the Act (“on a single day to be fixed by Proclamation”), or different commencements for different provisions proclaimed by one or more Proclamations (“on a day or days to be fixed by Proclamation”).

29 You should discuss with your instructors which is the appropriate version for a particular Bill. The discussion should take account of:

- the possible need to commence different provisions at different times (e.g. to take account of administrative work that needs to be done before commencement, or to ensure that budgetary targets are met); and
- the need to ensure that related provisions are not rendered unworkable by being proclaimed at different times (e.g. provisions creating offences relating to breaches of licence conditions should not commence before the provisions establishing the licensing scheme).

30 If multiple commencements are needed, but some groups of provisions all need to commence at the same time, the groups that need to commence together should be linked by the commencement provision (see paragraph 135 for the form of the linking provision).

### **Proclaimed date dependent on specified event**

31 In some cases, a commencement Proclamation should not be made before a particular event occurs (e.g. a treaty being signed), and the commencement provision will need to specify this. However, in general, such a commencement provision should also comply with the basic Proclamation policy by providing for automatic commencement, or repeal, if a Proclamation is not made within a specified period after the event occurs.

32 If the particular event may not be readily traceable by readers (see paragraphs 63 to 65), a provision should also be included requiring that any automatic commencement or repeal should be notified by notifiable instrument. If the notice is not an instrument

announcing the day an international agreement enters into force for Australia (see section 8 of the *Legislation (Exemptions and Other Matters) Regulation 2015*), a provision should be included clarifying the status of the notification for the purposes of the *Legislation Act 2003*. It is likely to be a notifiable instrument in the same way as commencement instruments are—see paragraphs 8(8)(b) and 11(2)(a) of the *Legislation Act 2003*.

33 Paragraphs 129, 130 and 138 set out the standard form for these commencement provisions.

### **Commencements not to be linked to Proclamations**

34 In some cases it will be desirable to link the commencement of one Bill (or a part of a Bill) to the commencement of provisions of another Bill that are to commence by Proclamation or, if a Proclamation is not made within a specified period, at the end of that period.

35 In these cases the commencement should be linked to the commencement of the other provisions and not to the making of the Proclamation. This is because the Proclamation may never be made.

### **Other deferred commencements**

36 Recently, the Senate Scrutiny of Bills Committee seems to have taken the view that any significant deferral of commencement should be explained. This includes cases in which a guaranteed commencement is provided for, but is deferred for more than 6 months after Royal Assent (e.g. commencement 12 months after Royal Assent). If your instructors request such a provision, you should advise them to include in the Explanatory Memorandum some sort of explanation for the length of the deferral.

## **Division 2—Instruments**

### **Significance of the Legislation Act 2003**

#### **Registration on FRL**

37 The *Legislation Act 2003* introduced a system of registration for certain kinds of instruments on a register known as the Federal Register of Legislation (*FRL*). One kind of instrument to be registered on FRL is legislative instruments. They include instruments such as regulations and other instruments that are, broadly speaking, of a legislative character (see section 8 of the *Legislation Act 2003*). If an Act confers a rule-making power on judges, the rules of court are not legislative instruments, but the Act applies the *Legislation Act 2003* to the rules as if they were legislative instruments (see, for example subsection 59(4) of the *Federal Court of Australia Act 1976*).

38 The purpose of FRL is to make legislative instruments more accessible. Earlier arrangements for subordinate instruments (described by the 1992 report of the Administrative Review Council, *Rule Making by Commonwealth Agencies* as “patchy, dated and obscure”), often only required publication or notification in the Government Gazette, if at all.



39 The critical importance of registration underlying the *Legislation Act 2003* is reflected in the fact that an unregistered instrument that should otherwise be registered under the Act is unenforceable (see section 15K of the *Legislation Act 2003*).

### **Unsuitability of day of registration commencements**

40 Day of registration commencement of legislative instruments raises similar concerns to Royal Assent commencement of Acts (see paragraphs 12 to 17).

41 Under section 3 of the *Acts Interpretation Act 1901* as applied by paragraph 13(1)(a) of the *Legislation Act 2003*, a legislative instrument commencing on the day of registration would have effect from the first moment of the day of registration, and would therefore be likely to have been in force for at least some hours before it was actually registered and its text available to the public.

42 Another reason to avoid commencement on the day of registration is practical in nature. If the instrument is intended to commence on the day it is registered, all the necessary registration steps must be completed on that day. This could be particularly difficult where a number of instruments are to be registered on the same day.

43 For these kinds of reasons, it is better to avoid commencement on registration in favour of commencement shortly after registration (e.g. the day after registration). You should raise these issues with clients who request registration commencement.

### **Retrospectivity etc.**

44 Although subsection 12(3) of the *Legislation Act 2003* allows for retrospective commencement of legislative instruments, subsection 12(2) of the *Legislation Act 2003* provides that a provision of a legislative instrument does not apply in relation to a person to the extent that the provision commences before the day it is registered, and as a result:

- (a) the person's rights as at that day would be affected so as to disadvantage the person; or
- (b) liabilities would be imposed on the person in respect of anything done or omitted to be done before the date of registration.

45 The enabling Act for an instrument can exclude the application of subsection 12(2) or (3) of the *Legislation Act 2003* (see subsection 12(4)).

46 The Senate Standing Committee on Regulations and Ordinances, like the Senate Scrutiny of Bills Committee, takes an interest in retrospective commencement provisions.

## ***Instrument commencement provisions: general principles***

### **Overview and context**

47 Subject to special provision in a particular Act, legislative instruments commence under section 12 of the *Legislation Act 2003*.

48 Under subsection 12(1), an instrument commences at the start of the day after the instrument is registered (see paragraph 12(1)(a)), or in accordance with any provision of the instrument that provides otherwise (see paragraph 12(1)(b)).

49 Paragraph 12(1)(b) opens up a number of possibilities, including, for example, the instrument being specified to commence on:

- a specified treaty entering into force for Australia; or
- the commencement of a legislative instrument (or a specified provision of a legislative instrument); or
- the commencement of specified State or Territory legislation (or a specified provision of such legislation); or
- the expiry of a specified period of time; or
- making, publication or registration of a specified separate commencement instrument.

### **Commencement instruments**

50 The concept of a commencement instrument provides a basis for commencing a legislative instrument by the making of an instrument (see the definition of *commencement instrument* in section 4 of the *Legislation Act 2003*). The effect of this is to give the ability to fix a specific commencement date (e.g. 25 July 2015). For an example, see the *Export Inspection (Quantity Charge) Amendment Regulations 2011 (No. 1)*, SLI 2011 No. 240, and the related Gazette notice published in GN 50. 21 December 2011, p 3015.

51 Commencement instruments for instruments should only be needed in very limited circumstances, as commencement on a particular day or on the day after registration is generally appropriate.

52 Commencement instruments are notifiable instruments (see paragraph 11(2)(a) of the *Legislation Act 2003*).

53 The power to make a commencement instrument for another instrument should specify who is given the power to make the commencement instrument. If the other instrument is a regulation, the power should be given to the relevant administering Minister. Otherwise, the power should be given to the instrument maker. (See paragraph 114 for the standard forms.)

54 Although the definition of *enabling legislation* in section 4 of the *Legislation Act 2003* contemplates that a legislative instrument may be made under another legislative instrument, a legislative instrument should not be used to commence another legislative instrument.

### **Commencements not to be linked to commencement instruments**

55 In some cases it will be desirable to link the commencement of an instrument (or a part of an instrument) to the commencement of:

- provisions of a Bill that are to commence by Proclamation or, if a Proclamation is not made within a specified period, at the end of that period; or
- provisions of another instrument that are to commence by commencement instrument or, if a commencement instrument is not made within a specified period, at the end of that period.

56 In these cases the commencement should be linked to the commencement of the other provisions and not to the making of the Proclamation or commencement instrument. This is because the Proclamation or commencement instrument may never be made.

## **Division 3—Bills and instruments**

### ***Reliance on automatic commencement***

57 The long-standing practice is to require that each Bill and legislative instrument contain a commencement provision. This provides the greatest certainty possible in the individual circumstances.

58 This is despite subsection 3A(2) of the *Acts Interpretation Act 1901*, which provides for automatic commencement of Acts on the 28th day after Royal Assent, and paragraph 12(1)(a) of the *Legislation Act 2003*, which provides for automatic commencement of legislative instruments on the day after they are registered.

59 I think that reliance on the *Acts Interpretation Act 1901* or the *Legislation Act 2003* provision these days is probably not sensible. Users of Bills (and the resulting Acts) and instruments are so used to seeing commencement provisions that they are more likely to interpret omission of a commencement provision as a drafting oversight than as an attempt to rely on the automatic commencement provision. While the legal position would not be in doubt, the omission of a commencement provision is likely to confuse a lot of users and require time-consuming explanations to be given in a range of cases.

60 Accordingly, a Bill or legislative instrument should (except as provided below) only be drafted in reliance on an automatic commencement provision for specific good reason and after discussion with the head drafter. In such a case you should advise your instructors that the operation of that provision should be mentioned in the Explanatory Memorandum or Explanatory Statement.

61 One exception to this rule is commencement Proclamations. As a general rule, commencement proclamations do not include a commencement provision. However, as a result, paragraph 12(1)(a) of the *Legislation Act 2003* applies (that is, the Proclamation itself will commence on the day after registration).

62 If, however, the day the Proclamation is fixing for the Act to commence is to be the same day the Proclamation is made, you should include a commencement provision commencing the Proclamation on the day, and at the time, the Proclamation is registered. The reason for this is that the Proclamation does not become a Proclamation until it is registered (see the definition of ***Proclamation*** in section 2B of the *Acts Interpretation Act 1901*). While the commencement Proclamation would not commence retrospectively, the Act would commence at the beginning of the day the Proclamation is made and registered. You should

consider whether the retrospective commencement of the Act raises any issues. Example 8 in Attachment B provides an example of a commencement Proclamation that includes a commencement provision.

### ***Provisions that link commencement to certain events***

63 There are a small number of commencement provisions that rely on the occurrence of certain events that are not easily “traceable” (unlike Royal Assent, Proclamation or the commencement of another Act). Such provisions may make it difficult for readers to determine whether an Act or instrument has commenced, and are therefore generally undesirable. For commencement provisions linked to certain events (e.g. the entry into force for Australia of an international agreement) you should consider the issue of retrospectivity discussed in paragraph 8 for Royal Assent commencements.

64 Where it is absolutely necessary to link the actual commencement to an event, it may be desirable to require formal notification, such as by notifiable instrument, that the Act or instrument has commenced (see paragraphs 129, 130 and 138). If the notice is not an instrument announcing the day an international agreement enters into force for Australia (see section 8 of the *Legislation (Exemptions and Other Matters) Regulation 2015*), a provision should be included clarifying the status of the notification for the purposes of the *Legislation Act 2003*. It is likely to be a notifiable instrument in the same way as commencement instruments are—see paragraphs 8(8)(b) and 11(2)(a) of the *Legislation Act 2003*.

65 In order to ensure that a consistent approach is taken in these provisions, the head drafter’s approval is required for any commencement provision that relies on an event other than Royal Assent, Proclamation, the commencement of another Act or legislative instrument, or the registration of an instrument. Where appropriate, such provisions would then be added to the available standard provisions.

### ***Provisions for commencement of Bills or instruments in a “package”***

66 It cannot be assumed that any Bill will pass, or that Bills that are considered together will either both (or all) pass, or not pass. If Bills are being introduced as a “package”, the commencement provisions of the Bills should be tied. If instruments are part of the package, careful consideration will need to be given to their commencement.

67 The most common example is a new principal Bill and a Bill containing the consequential and transitional measures for the principal Bill. Normally, the commencement provisions for the consequential and transitional Bill will be tied to the commencement of the main Bill. This ensures that if the consequential and transitional Bill is passed by the Parliament without amendment, but the main Bill is the subject of disagreement and does not pass, then the consequential and transitional Bill will not come into effect.

68 This does, however, raise the question of what would happen if the main Bill is passed, but the consequential Bill is not. Drafters should think about whether provision ought to be made in the commencement provisions to deal with this case. If you propose to include provisions of this nature, you should speak to the head drafter first.

## **Provisions that never commence**

69 The statute book contains 3 classes of provisions dealing with provisions that might never commence (because of some other event occurring):

- a provision saying that the provisions concerned do not commence at all (or never commence);
- a provision saying that the provisions concerned are of no effect;
- a provision that operates to repeal the provisions concerned when it is apparent that they will not commence.

70 For future consistency, “do/es not commence at all” is to be used in all cases, other than for provisions that are expressed to be repealed as a result of a failure to commence under a Proclamation or, for instruments, a commencement instrument. Provisions that do not commence may be repealed in a later amending Bill or, for instruments, by a regulation under section 48E of the *Legislation Act 2003* if they are no longer required.

## **Commencement of paragraphs**

71 You should not give a paragraph of a substantive provision (section, subsection or clause) a different commencement date from other parts of the substantive provision.

## **References to commencements of Acts or legislative instruments**

72 Commencement provisions sometimes refer to the commencement of another Act or legislative instrument, and this causes problems if the Act or instrument referred to does not have a single commencement. You should take special care in drafting any commencement provision that refers to the commencement of a specified Act or instrument.

73 Very occasionally it will be necessary for the commencement provision of an instrument to refer to the commencement of a State or Territory Act. A recent example of an instrument that does this is the *Crimes Amendment (Disclosure of Information) Regulation 2014*. There is a need for care in references of this kind, particularly where more than one Act is involved. Some considerations to be borne in mind are as follows:

- even if a State or Territory Act has only one commencement date, a decision might later be made at State or Territory level to change the date;
- if a State or Territory Act is expressed to commence on Proclamation or another commencement instrument, State or Territory law may allow several different dates to be fixed for the commencement of different parts of the Act;
- the law of some States or Territories may provide that certain provisions commence automatically on assent (such as naming and commencement provisions), even if the rest of the provisions commence later (e.g. on proclamation);

- the law of some States or Territories may provide for automatic Macklin clauses that commence legislation automatically if it has not been commenced in full within a certain period.

74 The safest approach is to choose one provision in the State or Territory legislation (preferably a key provision) and have the instrument commence on the commencement of that provision. If you want to ensure that the instrument commences even if the State or Territory legislation never commences, you need to make this clear. However, it would be unusual that the instructor would want the legislation to commence if the State or Territory legislation never commenced.

### **References to time**

75 References to times in commencement provisions are to be in the following form:

[the specified time] (by legal time in the Australian Capital Territory) on [the specified day]—e.g. 7.30 pm (by legal time in the Australian Capital Territory) on 1 July 2000.

76 Obviously, if the time is to be calculated by reference to the legal time in a place other than the Australian Capital Territory, that other place should be specified.

77 The reference to a place does not need to be included if section 37 of the *Acts Interpretation Act 1901* is intended to apply.

## **Part 3—Commencement provisions: form for Bills and instruments**

78 This Part applies to Acts and instruments (including commencement instruments).

### **The basic rules**

79 A simplified guide to drafting commencement provisions is in Attachment C.

### **Commencement provisions to be set out using table**

80 Commencement provisions are to be set out using the table form described below. This will result in a single row table for some Acts and instruments. (The commencement for a commencement instrument is the only exception to this rule.)

### **Commencement for each provision to be explicitly stated**

81 The commencement for each provision is to be explicitly stated. This means that:

- (a) no phrases such as “the remaining provisions” or “provisions other than...” are to be used. (The table item covering the preliminary sections will be expressed to cover “anything in this Act/instrument not elsewhere covered by this table”. However, this is to be used only to cover things such as the long title, and headings in legislation with split commencements, which may not otherwise be covered. It is not to be used by drafters to cover provisions of the draft that could be specified in the table); and

- (b) table items should not contain cross-references to other provisions of the legislation, or other table items (i.e. each table item should contain the full commencement text for the provisions covered by that table item).

82 There are two exceptions to the rule, which are discussed in paragraphs 83 to 88.

***Exception—if provisions in separate table items must commence by the same commencement instrument***

83 The first exception is if:

- (a) particular provisions of the legislation are to commence on a day to be fixed by commencement instrument; and
- (b) other provisions of the legislation must commence together with those provisions.

The other provisions may be stated to commence at the same time as the provisions covered by the relevant table item (see paragraphs 135 to 137).

84 The commencement item for the other provisions must refer to the commencement table item, not to the substantive provisions. This is because it will usually be easier for a reader to locate the table item than to search for references to substantive provisions within table items.

85 However, if the table item dealing with the commencement instrument refers to “a day or days” to be fixed by a commencement instrument, the other provisions should be stated to commence at the same time as the particular substantive provisions that the commencement should be linked to. Otherwise, the commencement will become uncertain.

***Exception—if provisions must commence immediately after or immediately before other provisions of the legislation***

86 The second exception is that if particular provisions of the legislation must commence immediately after or immediately before another provision in the same legislation, those provisions may be stated to commence immediately after or immediately before the provision covered by the relevant table item.

87 Again, the commencement item must refer to the table item that covers the other provisions of the legislation, not directly to the substantive provisions. This is the case even if the commencement is related to a single provision and that provision is grouped with multiple other provisions in a commencement table item.

88 However, if the table item to which the commencement is to be linked is one that provides for commencement on “a day or days” to be fixed by a commencement instrument, then the provisions should be stated to commence immediately after or before the particular substantive provision to which the commencement should relate. (If this would result in the repetition of a substantial amount of text, you should discuss the matter with the head drafter).

## **Commencement provisions to be sequential**

89 Commencement provisions are to appear in sequence. The commencement for each provision is to be set out in the order in which the provision appears in the legislation—i.e. each provision must appear in the commencement provision before every provision that comes after it in the legislation (e.g. see table items 3, 4 and 5 in Example 2 in Attachment A).

## **Separate rows for provisions of different Schedules**

90 The commencement for part of a Schedule (expressed as items, Divisions or Parts) cannot be in the same row of the table as the commencement for any provision of the legislation that is outside that Schedule (e.g. see table items 2 and 3 in Example 4 in Attachment A).

## **Standard forms to be followed**

91 Standard forms are provided for the different commencement provisions and must be followed. If you are drafting a commencement provision for which there is no suitable standard form, you will need to get the head drafter's approval for your commencement provision.

## **Special rules are included in the table**

92 Special rules (such as the six month rule for Proclamations) and alternative commencements are to be included in the table.

93 It is considered that incorporating the material into the table will make the commencement provisions easier to use.

## **Supporting material to be in subsections**

94 Supporting provisions (such as the provision explaining how additional information can be added) are to be included in subsections in the commencement section.

## ***Commencement tables—introductory words for Bills and instruments***

95 The following words are to be used as the standard introductory words for all commencement provisions, and are to appear immediately before the table:

- (1) Each provision of this [Act/instrument] specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

96 The introductory words have been modified to take account of the inclusion of all of the information about the commencement of provisions being included in the table.

## **Commencement tables—form of table**

97 The following is an example of the table:



<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

98 The table has 3 columns:

- Column 1 containing Provisions;
- Column 2 containing Commencement;
- Column 3 for Date/Details.

### **Column 1**

99 Column 1 contains an item number to identify each row of the table followed by a full stop and 2 spaces and the provisions to which the commencement will apply. The provisions within a particular row must be sequential (this means that there may be a number of items in the table with identical commencement text).

100 The material in column 1 must identify the provisions directly—it should not identify the provisions by reference to some other matter (for example, the items that amend a particular Act or instrument).

### **Column 2**

101 Column 2 contains the commencement information about the provisions in the Provisions column. Exceptions, or special conditions, are also to be included in column 2.

### **Column 3**

102 Column 3 will set out the actual commencement date. It should not set out the commencement time (as opposed to the date) if the time:

- is clear from column 2; or
- is expressed to be when, or immediately before or after, some other event or commencement occurs; or
- is calculated using section 3 of the *Acts Interpretation Act 1901*.

103 Cases in which column 3 will need to set out a time are likely to be rare. One example would be a case in which a commencement instrument was required to set out a time as well as a date.

104 The “details” included in column 3 should be those explaining the basis for the date—e.g. details of commencement instruments.

105 The information in column 3 will be included by OPC drafters to the extent that it is known at the time a Bill or instrument is finalised. Additional information in column 3 will be added when later compilations of the Bill or instrument are done and as part of a publication after the Act or instrument has commenced. This information will not be “part of the Act”.

106 First Parliamentary Counsel will approve any changes in Bills to the information in column 3 that are made between the production of the Legislation Approval Process print and the production of the introduction print.

107 For Bills, the information in column 3 is also used to assist the table offices in Parliament to produce the Act print.

### **Formatting rules**

108 Tables are to be formatted in the same way as in the examples in Attachments A and B. In particular, no full stops are to be used at the end of cells in columns 1 and 3 in the table. Full stops are to be used at the end of every cell in column 2 of the table.

### **References to provisions in the table**

109 In column 1 (Provisions), an abbreviated method of referring to provisions of Schedules will be used. The reference to the Schedule will come first, followed by a comma, followed by the next largest unit etc.

110 For example, a reference to Division 1 of Part 3 of Schedule 2 would be expressed as Schedule 2, Part 3, Division 1. A reference to item 27 of Schedule 3 would be expressed as Schedule 3, item 27 (whether or not item 27 was in a Part or Division).

111 This should make the references easier to find as well as slightly shorter.

112 Normal reference methods are to be used in column 2.

### ***Standard provisions for column 2 of the commencement table***

#### **Standard provisions for Bills**

113 The following table sets out the standard provisions to be used for particular kinds of commencements for Bills. These are available using the Alt-C macro. The head drafter’s approval must be obtained if you need to include a provision that is not based on one of the standard forms.

<b>Kind of commencement</b>	<b>Words to be used in column 2 of the</b>	<b>Comments</b>
-----------------------------	--	-----------------

	<b>commencement table</b>	
<b>Royal Assent</b>	The day this Act receives the Royal Assent.	See paragraphs 12 to 18.
<b>Day after Royal Assent</b>	The day after this Act receives the Royal Assent.	See paragraphs 12 to 18.
<b>Specified period after Royal Assent</b>	The day after the end of the period of [specified period] beginning on the day this Act receives the Royal Assent.	
<b>28th day after Royal Assent</b>	The 28th day after this Act receives the Royal Assent.	See paragraphs 57 to 60.
<b>Proclamation (single day)</b>	<p>A single day to be fixed by Proclamation.</p> <p>However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</p>	<p>See paragraphs 19 to 35 and 138.</p> <p>The most usual alternative has been shown here. Other alternatives are in paragraph 132.</p>
<b>Proclamation (multiple days)</b>	<p>A day or days to be fixed by Proclamation.</p> <p>However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</p>	<p>See paragraphs 19 to 35 and 136 and 137.</p> <p>The most usual alternative has been shown here. Other alternatives are in paragraph 132.</p>
<b>Specified day</b>	[the specified day—eg. 1 July 2015].	
<b>Specified time</b>	[the specified time on the specified day—eg. 7.30 pm (by legal time in the Australian Capital Territory) on 1 July 2015].	See paragraphs 75 to 77.
<b>Immediately after/before (except where immediately after/before provisions of</b>	Immediately after/before the commencement of [the provisions covered by table item X]/[specified provisions	See paragraphs 34, 35 and 72 and 86 to 88.

<b>the same Act that are to commence on a day or days to be fixed by Proclamation)</b>	of] [specified Act].	
<b>Immediately after/before (provisions of the same Act that are to commence on a day or days to be fixed by Proclamation)</b>	Immediately after/before the commencement of [specified provisions of this Act].	See paragraphs 86 to 88.
<b>At the same time as (provisions of another Act)</b>	At the same time as [specified provisions of][specified Act] commence[s].  However, the provisions do not commence at all if [those sections do not commence].	See paragraphs 34, 35 and 72.  Commencement at the same time as other provisions of the same Act should be dealt with in accordance with paragraphs 81 to 85 and 135 to 137.
<b>At the same time as (provisions of this Act that are to commence on a single day to be fixed by Proclamation)</b>	At the same time as the provisions covered by table item X.	See paragraphs 34, 35, 83 to 85 and 135 to 137.
<b>At the same time as (provisions of this Act that are to commence on a day or days to be fixed by Proclamation)</b>	At the same time as [specified provisions of this Act].	See paragraphs 88 and 136.
<b>The earlier of</b>	The earlier of: (a) [first option]; and (b) [second option].	See paragraphs 125 to 127 and 146.
<b>The later of (events in both certain)</b>	The later of: (a) [first option]; and (b) [second option].	See paragraphs 119 to 130 and 146.
<b>The later of (event in second option uncertain)</b>	The later of: (a) [first option]; and (b) [second option].  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	See paragraphs 119 to 130 and 146.

<p><b>The later of (events in both options uncertain)</b></p>	<p>The later of: (a) [first option]; and (b) [second option].</p> <p>However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p>	<p>See paragraphs 119 to 130 and 146.</p>
<p><b>Conditional (at a specified time, if a specified event (including commencement of another Act) occurs, or does not occur, within a specified time)</b></p>	<p>[standard description of intended commencement].</p> <p>However, the provisions do not commence at all if [condition].</p> <p>eg:</p> <p>The day this Act receives the Royal Assent.</p> <p>However, the provisions do not commence at all if the XYZ Act 2015 does not receive the Royal Assent before 30 June 2015.</p>	<p>See paragraphs 63 to 70, 72 and 115 to 118.</p>
<p><b>Not to commence unless other Acts have commenced (the GST provision)</b></p>	<p>The provisions do not commence at all unless all of the following Acts have commenced [on or before [specified day], in which case they commence immediately after the last of those Acts to commence:</p> <p>(a) [first Act]; (b) [second Act]; (c) etc.</p>	<p>See paragraph 72.</p> <p>This is in fact a special case of a conditional commencement, and could be drafted as an ordinary conditional commencement. However, this form emphasises the restrictions on commencement, and may sometimes be required for presentational reasons.</p>
<p><b>Conditional (only one of 2 or more provisions commences)</b></p>	<p>[As for a single conditional commencement, but using a separate row for each of the alternative provisions].</p>	<p>See paragraphs 63 to 70 and 115 to 118.</p>
<p><b>Standard commencement for amendments to tax legislation administered by Treasury</b></p>	<p>The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.</p>	<p>The previous standard commencement was the day of Royal Assent commencement. This has now been replaced by the new standard</p>

		commencement of the start of the first quarter following Royal Assent. Other commencements remain unchanged, unless they include a Royal Assent element.
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### Standard provisions for instruments

114 The following table sets out the standard provisions to be used for particular kinds of commencements for instruments. These are available using the Alt-C macro. The head drafter's approval must be obtained if you need to include a provision that is not based on one of the standard forms.

<b>Kind of commencement</b>	<b>Words to be used in column 2 of the commencement table</b>	<b>Comments</b>
<b>Registration</b>	The day this instrument is registered.	See paragraphs 37 to 43.
<b>Day after registration</b>	The day after this instrument is registered.	See paragraphs 37 to 43.
<b>Specified period after registration</b>	The day after the end of the period of [specified period] beginning on the day this instrument is registered.	
<b>Commencement instrument (single day)</b>	A single day to be fixed by [the Minister/the instrument maker] by notifiable instrument.  However, if the provisions do not commence within the period of 6 months beginning on the day this instrument is registered, they commence on the day after the end of that period.	See paragraphs 50 to 55.  The most usual alternative has been shown here. Other alternatives are in paragraph 132.
<b>Commencement instrument (multiple days)</b>	A day or days to be fixed by [the Minister/the instrument maker] by notifiable instrument.  However, if any of the provisions do not commence within the period of 6 months beginning on the day this	See paragraphs 50 to 55.  The most usual alternative has been shown here. Other alternatives are in paragraph 132.

	instrument is registered, they commence on the day after the end of that period.	
<b>Specified day</b>	[the specified day—e.g. 1 July 2015].	
<b>Specified time</b>	[the specified time on the specified day—e.g. 7.30 pm (by legal time in the Australian Capital Territory) on 1 July 2015].	See paragraphs 48 and 75 to 77.
<b>Immediately after/before (except where immediately after/before provisions of the same instrument that are to commence on a day or days to be fixed by commencement instrument)</b>	Immediately after/before the commencement of [the provisions covered by table item X]/[specified provisions of] [specified Act/instrument].	See paragraphs 72 and 86 to 88.  Any reference in the commencement provisions to the enabling Act should include the Act name in full, even if the term “Act” is defined in the instrument to mean the enabling Act.
<b>Immediately after/before (provisions of the same instrument that are to commence on a day or days to be fixed by commencement instrument)</b>	Immediately after/before the commencement of [specified provisions of this instrument].	
<b>At the same time as (provisions of an Act or another instrument)</b>	At the same time as [specified provisions of][specified Act/instrument] commence[s].  However, the provisions do not commence at all if [those sections do not commence].	Any reference in the commencement provisions to the enabling Act should include the Act name in full, even if the term “Act” is defined in the instrument to mean the enabling Act.
<b>At the same time as (provisions of this instrument that are to commence on a single day to be fixed by commencement instrument)</b>	At the same time as the provisions covered by table item [X].	See paragraphs 83 and 84, and 135 to 137.
<b>At the same time as (provisions of this</b>	At the same time as [specified provisions of this	See paragraphs 83 to 85, and 135 to 137.

<b>instrument that are to commence on a day or days to be fixed by commencement instrument)</b>	instrument].	
<b>The earlier of</b>	The earlier of: (a) [first option]; and (b) [second option].	See paragraphs 125 to 127 and 146.
<b>The later of (events in both certain)</b>	The later of: (a) [first option]; and (b) [second option].	See paragraphs 119 to 130 and 146.
<b>The later of (event in second option uncertain)</b>	The later of: (a) [first option]; and (b) [second option].  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	See paragraphs 119 to 130 and 146.
<b>The later of (events in both options uncertain)</b>	The later of: (a) [first option]; and (b) [second option].  However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	See paragraphs 119 to 130 and 146.
<b>Conditional (at a specified time, if a specified event (including commencement of another Act or instrument) occurs, or does not occur, within a specified time)</b>	[standard description of intended commencement].  However, the provisions do not commence at all if [condition].  e.g.: The day after this instrument is registered.  However, the provisions do not commence at all if the XYZ Act 2015 does not receive the Royal Assent /the ABC instrument 2015 is not registered before 30 June 2015.	See paragraphs 115 to 118.



<p><b>Not to commence unless other Acts or instruments have commenced (the GST provision)</b></p>	<p>The provisions do not commence at all unless all of the following [Acts /instruments] have commenced on or before [specified day], in which case they commence immediately after the last of those [Acts /instruments] to commence: (a) [first Act/ instrument]; (b) [second Act/ instrument]; (c) etc.</p>	<p>See paragraph 69.  This is in fact a special case of a conditional commencement, and could be drafted as an ordinary conditional commencement. However, this form emphasises the restrictions on commencement, and may sometimes be required for presentational reasons.</p>
<p><b>Conditional (only one of 2 or more provisions commences)</b></p>	<p>[As for a single conditional commencement, but using a separate row for each of the alternative provisions].</p>	<p>See paragraphs 115 to 118.</p>

## ***Special conditions***

### **Conditional commencement**

115 Where a commencement is conditional on something, the following second sentence is to be included:

However, the provisions do not commence at all if [the condition is satisfied/not satisfied].

116 If it is considered necessary, you may also insert a formal note in the draft after the relevant provision in the following form:

Note: This [item/section] does not commence at all if [relevant condition is satisfied/not satisfied]. See [relevant table item of the commencement provision].

117 Generally, such notes should be kept to a minimum.

118 If a drafter considers that the inclusion of numerous such notes would be appropriate in a particular case, the drafter should raise the matter with the head drafter.

### **“Later of” commencements**

119 The form of “later of” commencements depends on whether the events in the 2 options are “certain” or “uncertain”.

120 A *certain event* means an event that, at the time of drafting the Bill or instrument, is certain to occur at some future time (even if the exact time is not yet known). The following are examples of certain events:

- (a) a specified date;
- (b) Royal Assent to the Bill that contains the commencement provision;

- (c) the commencement of another provision in the Bill, or of a provision in another Act that has been enacted, where the provision is to commence on Proclamation (subject to forced commencement at the end of a specified period if not proclaimed earlier).

121 An *uncertain event* means an event that, at the time of drafting the Bill or instrument, may or may not occur at some future time. The following are examples of uncertain events:

- (a) the commencement of another Bill that is still before the Parliament;
- (b) the commencement of a provision of another Act that has been enacted, where the provision is to commence by an open-ended power to proclaim;
- (c) an international agreement coming into force for Australia.

122 It is assumed that it is reasonable to refer to all the kinds of things that might be described in the paragraphs of the commencement provision as “events”, and so we can use a generic form of words such as “if the event referred to in paragraph (x) does not occur”, rather than having to devise a statement of the “non-happening” of the event that involves a repetition of the description of the event.

123 In some situations, there may be a need to build a time limit into the wording that states that the relevant items do not commence if an uncertain event does not occur. For example, “However, the items do not commence at all if the event mentioned in paragraph (b) does not occur before 1 July 2004” (where the event might, e.g., be Australia entering into an international agreement). The Senate Scrutiny of Bills Committee has commented adversely on Bills implementing international agreements that did not have a time limit (see for example Digest 9 of 2004 and Report 11 of 2004).

124 The examples may not cover all the theoretical possibilities for the way in which a “later of” commencement provision may refer to an uncertain event. For example, they do not cover a situation where commencement should occur even if a specified uncertain event does not occur, as it is hard to think of an example where this would be the desired result. A drafter faced with a situation outside these examples should consult the head drafter about how the commencement provision should be worded.

125 There is only one example of “earlier of” commencement provisions as such provisions do not present the same difficulty for working out what is intended if an uncertain event does not occur.

#### **“Later/earlier of” commencements—comparing periods and points of time**

126 An issue arises where there is a “later/earlier of” commencement where one of the events is a day (such as the day the Act receives the Royal Assent or the instrument is registered) and the other is a point in time (often the commencement of another Act).

127 In these cases, the first option should be:

- for an Act: “the start of the day this Act receives the Royal Assent”, not just “the day this Act receives the Royal Assent”; and

- for an instrument: “the start of the day this instrument is registered”, not just “the day this instrument is registered”.

128 In these cases, section 3 of the *Acts Interpretation Act 1901* does not convert the expression “the day this Act receives the Royal Assent” into “the start of the day this Act receives the Royal Assent” because, at the point in time at which you are comparing paragraphs (a) and (b) to work out which of the 2 paragraphs should apply, the “Act ... is [not] expressed to come into operation on a particular day”. So without the words “the start of the day”, you would be comparing a period with a point in time. Using the expression “the start of the day” will ensure that you are comparing 2 points in time rather than a point in time and a period.

### **“Later of” commencements and international agreements etc.**

129 As mentioned above, a “later of” commencement can be used if a Bill or instrument is required to commence no earlier than the time at which an international agreement comes into force for Australia. In this case, the commencement might begin:

For a Bill:

The later of:

- (a) [the day this Act receives the Royal Assent]; and
- (b) the day the [agreement] comes into force for Australia.

For an instrument:

The later of:

- (a) [the day after this instrument is registered]; and
- (b) the day the [agreement] comes into force for Australia.

The relevant Minister is often required to announce by notifiable instrument the entering into force of the agreement (see also paragraphs 32 and 63 to 65).

130 If this requirement is imposed, it should be done by adding these words at the end of the relevant commencement item:

The Minister must announce, by notifiable instrument, the day the [agreement] enters into force for Australia.

### **Commencement by instrument—standard provisions**

131 For each commencement involving a commencement instrument, the first “sentence” in column 2 of the table would specify “A single day to be fixed by [Proclamation/notifiable instrument]” or “A day or days to be fixed by [Proclamation/notifiable instrument]”. (See the tables in paragraph 113 and 114).

#### ***Standard provisions for Bills***

132 The standard forms for the second sentence for Bills are set out below. The words “any of” (in square brackets in each of the standard forms) are to be included only when using “A day or days to be fixed by Proclamation”.

#### ***Specified period + automatic commencement***

However, if [any of] the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

***Specified date + automatic commencement***

However, if [any of] the provisions do not commence before [specified date], they commence on that day.

***Specified period + automatic repeal***

*[Provisions to commence before end of period]*

However, if [any of] the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, the provisions are repealed on the day after the end of that period.

*[Commencement Proclamation to be registered before end of period]*

However, if the commencement of [any of] the provisions is not fixed by a Proclamation registered on the Federal Register of Legislation established under the *Legislation Act 2003*, within the period of 6 months beginning on the day this Act receives the Royal Assent, the provisions are repealed on the day after the end of that period.

***Specified date + automatic repeal***

*[Provisions to commence before specified date]*

However, if [any of] the provisions do not commence before [specified date], the provisions are repealed on that day.

*[Commencement Proclamation to be registered before specified date]*

However, if the commencement of [any of] the provisions is not fixed by a Proclamation registered on the Federal Register of Legislation established under the *Legislation Act 2003*, before [specified date], the provisions are repealed on that day.

***Standard provisions for instruments***

133 The standard forms for the second sentence for instruments are set out below. The words “any of” (in square brackets in each of the standard forms) are to be included only when using “A day or days to be fixed by notifiable instrument”.

***Specified period + automatic commencement***

However, if [any of] the provisions do not commence within the period of 6 months beginning on the day after this instrument is registered, they commence on the day after the end of that period.

***Specified date + automatic commencement***

However, if [any of] the provisions do not commence before [specified date], they commence on that day.

***Specified period + automatic repeal***

*[Provisions to commence before end of period]*

However, if [any of] the provisions do not commence within the period of 6 months beginning on the day after this instrument is registered, the provisions are repealed on the day after the end of that period.

*[Commencement instrument to be registered before end of period]*

However, if the commencement of [any of] the provisions is not fixed by notifiable instrument, within the period of 6 months beginning on the day after this instrument is registered, the provisions are repealed on the day after the end of that period.

***Specified date + automatic repeal***

*[Provisions to commence before specified date]*

However, if [any of] the provisions do not commence before [specified date], the provisions are repealed on that day.

*[Commencement instrument to be registered before specified date]*

However, if the commencement of [any of] the provisions is not fixed by notifiable instrument, before [specified date], the provisions are repealed on that day.

**Effect of automatic repeal on preliminary sections**

134 Because of the rule requiring the preliminary sections of an Act to commence on Royal Assent if the Act has provisions that commence at different times (see paragraph 143), the result of an automatic repeal provision may be to leave the preliminary sections in operation after the remainder of the Act is repealed. This case is quite rare, and causes no particular problems, so if it arises it should be dealt with by repealing the preliminary sections of the Act when an opportunity arises (for instance, in a portfolio Bill or statute law revision Bill). Similarly, for a legislative instrument, the operation of an automatic repeal provision may leave the preliminary sections in operation after the remainder of the instrument is repealed. In this case the remaining provisions may be repealed by a regulation under section 48E of the *Legislation Act 2003*.

**Multiple days fixed for commencement with some provisions linked**

135 If multiple commencements are needed, but some groups of provisions all need to commence at the same time, the groups that need to commence together should be linked in the table, using the following form:

At the same time as the provisions covered by table item X.

136 This form should only be used where the items are to commence on a single day to be fixed by commencement instrument. If the items are to commence on “a day or days” to be fixed by commencement instrument, the cross-reference should be to the particular substantive provisions to which the commencement is linked (not to the table item) (see paragraph 85). In all other cases where provisions commence on the same day (or at the same time), the full text of the commencement table item should be repeated. (If this would result in the repetition of a substantial amount of text, you should discuss the matter with the head drafter).

137 While the table item actually containing the commencement instrument provision will usually be the first table item that is covered by the commencement instrument (or alternative commencement), drafters may specify the commencement instrument in a later item if it is considered more appropriate. This may be because it is not the first item in a non-consecutive series of amending items on a topic that is the most important one (the first item on the topic might be a minor amendment consequential on a later substantive amendment in the same series).

### **Date to be fixed dependent on specified event**

138 Standard provisions for a commencement by instrument dependent on a specified event (see paragraphs 31 and 32) are as follows:

A Proclamation [*commencement instrument*] must not specify a day that occurs before the day [the relevant event occurs].

However, if [*any of*] the provisions do not commence within the period of 6 months beginning on the day [the relevant event occurs], they commence on the day after the end of that period. If [*any of*] the provisions commence in this way, the Minister must announce, by notifiable instrument, the day the provisions commenced.

(The words “any of” in square brackets are only to be included when the commencement by instrument uses “A day or days to be fixed by Proclamation/notifiable instrument”.)

### **Standard note to follow table**

139 The following note must be included after the table in Bills:

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

140 The following note must be included after the table in instruments:

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

141 The note is intended to alert readers to the fact that provisions included or repealed by later amendments will not be included in, or omitted from, the table.

### **Standard subsection to follow table— allowing completion of column 3 (Date/Details)**

142 The following subsection will always be included as subsection (2):

- (2) Any information in column 3 of the table is not part of this [Act/instrument]. Information may be inserted in this column, or information in it may be edited, in any published version of this [Act/instrument].

### **Other rules**

#### **When commencement on Royal Assent or day after registration is required for “preliminary” sections**

143 If all of the provisions in a Bill (including an amending Bill) are to commence at the same time, the commencement should be provided for in a single item in the commencement table (see Example 1 in Attachment A for an example). However, if a Bill has provisions that

commence at different times, the sections of the Bill containing the short title, the commencement and (for Bills with amending Schedules) the section dealing with Schedules must all be included in a separate item in the commencement table and expressed to commence on Royal Assent (see Example 2 in Attachment A for an example). This is included in the templates for new and amending Bills.

144 Similarly, if all of the provisions in an instrument (including an amending instrument) are to commence at the same time, the commencement should be provided for in a single item in the commencement table (see Example 1 in Attachment B for an example). If a legislative instrument has provisions that commence at different times, the sections of the legislative instrument containing the name of the instrument, the commencement, the authority and (for instruments with amending Schedules) the section dealing with Schedules must all be included in a separate item in the commencement table and expressed to commence on the day after registration (see Example 2 in Attachment B for an example).

145 The rule in paragraph 144 about the preliminary sections of an instrument commencing on the day after registration may not be appropriate for an instrument that is being made in reliance on section 4 of the *Acts Interpretation Act 1901*, because it may cause conflict with subsection 4(5) of that Act. If you are drafting an instrument that has a split commencement and that is being made in reliance on section 4 of the *Acts Interpretation Act 1901*, you should discuss the matter with the head drafter.

#### **No special provisions for “same time” issues**

146 Where a provision is expressed to commence at the earlier/later of 2 events, no provision is to be included to cover the situation where the events occur at the same time. Similarly, where a provision is expressed to commence at the earliest/latest of more than 2 events, no provision is to be included to cover the situation where more than one of those events occur at the same time.

#### **No notes referring to *Acts Interpretation Act 1901* or *Legislation Act 2003***

147 No notes are to be included in the commencement section setting out the effect of provisions of the *Acts Interpretation Act 1901* or the *Legislation Act 2003*.

#### **References to the table and table items**

148 References in the commencement section itself to the table do not need to specify that it is in subsection (1).

149 References to an item in the table should refer to “table item”.

#### **References to “provisions”**

150 Any references within the table to a provision or provisions should refer to “provisions” to cover both the singular and plural form (relying on paragraph 23(b) of the *Acts Interpretation Act 1901* for the word “provisions” to cover a single provision). The form “provision(s)” should not be used.

## **Defined terms not to be used**

151 Defined words or phrases may be used in the table if they are used elsewhere in the Bill or instrument or in the principal Act, enabling legislation or principal instrument. Words or phrases should not be defined in the Bill or instrument solely for use in the table. The reason for this rule is to keep the commencement provision as self-contained as possible.

## **Statute Law Revision (SLR) amendments of Acts**

152 The commencement provisions specified in Drafting Direction 4.4 (for SLR amendments of Acts) should be used for SLR amendments rather than the general commencement provisions specified in this Drafting Direction.

## **Parliamentary amendments of Bills**

153 Parliamentary amendments will often require a consequential amendment of the commencement provision.

154 However, where the amendment is to omit a provision, or insert a provision, that is within a range specified in column 1 of the table, but not specifically mentioned in that column, no amendment should be made.

155 For example, if a table item covers items 10 to 47 of Schedule 1 and there is a parliamentary amendment to omit item 26, no consequential amendment should be made to the table item. Drafters may, however, alert instructors to the need to check whether any change is required to explanatory materials.

## **Provisions not covered by standard forms**

156 Rarely, you may be asked to draft a commencement provision that is not covered by the standard forms.

157 In order to ensure that a consistent approach is taken for non-standard provisions, the head drafter's approval is required for any commencement provision for which there is not a standard form. Where appropriate, such provisions would then be added to the available standard provisions.

## ***Examples***

158 Attachment A contains examples of commencement provisions for Bills drafted in accordance with this Drafting Direction. Examples of commencement provisions for legislative instruments are set out in Attachment B.

## ***Relationship with IT system***

159 The table and the standard subsections (1) and (2) appear in the templates for New Acts and Amending Bills. The other standard provisions for the table are available using the Alt-C macro. For instruments, the standard provisions and the commencement table are inserted using the Alt-C macro.



160 There is also a version of the table for use in parliamentary amendments. This is available as an autotext entry. (The same autotext entry can be used as the basis for other amendments of tables.)

161 The Renumber Amending Schedules macro ends with a message reminding staff to check the numbering in the commencement clause.

162 A macro has been developed to renumber the items of the table and renumber any cross-references to those items. Word Note 3.11 deals with this.

163 The implementation of the OPC form of commencement provisions has also facilitated the automated production of the Acts and Bills Tables from the Bills database.

Peter Quiggin PSM  
First Parliamentary Counsel  
31 January 2017

<b>Document History</b>		
<b>Release</b>	<b>Release date</b>	<b>Document number</b>
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1.1	2 May 2007	s06rd372.v03.doc
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3.1	21 December 2010	s06rd372.v20.docx
3.2	12 May 2011	s06rd372.v23.docx
3.3	16 May 2011	s06rd372.v24.docx
3.4	21 July 2014	s06rd372.v31.docx
4.0	29 April 2015	s06rd372.v50.docx
4.1	12 May 2015	s06rd372.v52.docx
4.2	29 February 2016	s06rd372.v59.docx
4.3	18 May 2016	s06rd372.v66.docx
4.4	31 January 2017	s06rd372.v69.docx

Note: Before the issue of the current series of Drafting Directions, this Drafting Direction was known as Drafting Direction No. 10 of 2005.

## Attachment A—Examples of commencement provisions for Bills

The examples in this Attachment are based on actual Bills or Acts but have been modified to comply with all of the new rules.

### Example 1

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### Example 2

#### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	
3. Schedule 3, items 1 to 40	The 28th day after this Act receives the Royal Assent.	
4. Schedule 3, item 41	Immediately after the commencement of section 26 of the <i>Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988</i> .	1 July 1988
5. Schedule 3,	The 28th day after this Act receives the	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
items 42 to 116	Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **Example 3**

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
3. Schedule 3	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the [Agreement], done at [location] on [date], comes into force for Australia.  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur within the period of 6 months beginning on the day this Act receives the Royal Assent.  The Minister must announce, by notifiable instrument, the day the [Agreement] comes into force for Australia.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## Example 4

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1	At the same time as the provisions covered by table item 2.	
4. Schedule 2, Part 2	The later of: (a) the start of the day that is the transfer day for the purposes of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> ; and (b) immediately after the commencement of the provisions covered by table item 2.  However, the provisions do not commence at all if the event mentioned in paragraph (a) does not occur.	
5. Schedule 3	1 January 1999.	1 January 1999
6. Schedule 4, item 1	Immediately after the commencement of item 44 of Schedule 1 to the <i>Health Insurance Amendment (Professional Services Review) Act 1999</i> .	1 August 1999
7. Schedule 4, item 2	The day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## Example 5

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Parts 2 and 3	The day this Act receives the Royal Assent.	
4. Schedule 1, Part 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Schedule 1, Parts 5, 6 and 7	The day this Act receives the Royal Assent.	
6. Schedule 2	1 December 2002.	1 December 2002
7. Schedule 3, Part 1	The day this Act receives the Royal Assent.	
8. Schedule 3, items 4 to 7	The day this Act receives the Royal Assent. However, the provisions do not commence at all if this Act does not receive the Royal Assent before the commencement of item 39 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .	
9. Schedule 3, items 8 and 9	The day this Act receives the Royal Assent. However, the provisions do not commence at all if this Act does not receive the Royal Assent before the commencement of item 62 of Schedule 3 to the <i>Customs Legislation</i>	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
<i>Amendment and Repeal (International Trade Modernisation) Act 2001.</i>		
10. Schedule 3, Part 3	1 July 2003.	1 July 2003
11. Schedule 3, Part 4	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of item 62 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## **Example 6**

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## **Example 7**

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	1 July 2012.	1 July 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **Example 8**

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.



## Attachment B—Examples of commencement provisions for instruments

### Example 1

#### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### Example 2

#### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The day after this instrument is registered.	
3. Schedule 2	Immediately after the commencement of the provisions covered by table item 2.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### Example 3

#### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1, Parts 1 to 4	1 July 2012.	1 July 2012
3. Schedule 1, Part 5	1 October 2012.	1 October 2012
4. Schedule 2, Parts 1 to 4	1 July 2012.	1 July 2012
5. Schedule 2, Part 5	1 October 2012.	1 October 2012
6. Schedule 3, Parts 1 to 3	1 July 2012.	1 July 2012
7. Schedule 3, Part 4	1 October 2012.	1 October 2012

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### Example 4

#### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as sections 17 to 27A of the <i>Tobacco Plain Packaging Act 2011</i> commence. However, the provisions do not commence at	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
all if those sections do not commence.		

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### **Example 5**

#### **2 Commencement**

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day sections 17 to 27A of the <i>Tobacco Plain Packaging Act 2011</i> commence.  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### **Example 6**

#### **2 Commencement**

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	The later of: (a) the start of the day after this instrument is	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>registered; and</p> <p>(b) immediately after the commencement of the <i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws — General Law Reform) (Veterans' Affairs) Regulations 2009</i>.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## **Example 7**

### **2 Commencement**

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this instrument	<p>The later of:</p> <p>(a) the day after this instrument is registered; and</p> <p>(b) the day the [amendments to Annex 4-A to the Australia–US Free Trade Agreement, agreed to by Australia and the United States], done at [location] on [date], come into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day the amendments come into force for Australia.</p>	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

**Example 8**

## **XYZ Commencement Proclamation 2015**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under item 2 of the table in subsection 2(1) of the *XYZ Act 2015*, fix 26 March 2015 as the day on which Part 2 of that Act commences.

This instrument commences on the day, and at the time, it is registered.

Signed and sealed with the Great Seal of  
Australia on 26 March 2015.

## Attachment C—Simplified guide to drafting commencement provisions

1 All commencement provisions are to be done in a table even if the table only has one row.

Reason: To provide consistency and facilitate the actual date of commencement being shown on the face of the commencement provision.

2 Where there is a split commencement, initial sections (and odd bits and pieces) must commence on Royal Assent for Bills and on the day after registration for instruments.

Reason: To avoid a technical argument about how the initial sections can commence where there is a split commencement.

3 Every provision must be explicitly mentioned, or covered by an express description of a segment of the Bill or instrument (e.g. “Part 3, Division 4 ” or “sections 14 to 23”). The extra words in the first table item are only to cover headings etc.

Reason: This is a fundamental principle of the table approach. It ensures that it is easy to find the commencement of every provision in the Bill or instrument.

4 The provisions of the Bill or instrument must be dealt with in the order that the provisions appear in the Bill or instrument.

Reason: This is a fundamental principle of the table approach. It ensures that it is easy to find the commencement of every provision in the Bill or instrument.

5 Standard forms must be used and the head drafter’s agreement must be obtained for any departures from the standard forms.

Reason: This is to ensure consistency and to avoid time being unnecessarily spent inventing and refining new approaches.

Note: To insert the standard forms, position the cursor in the appropriate place in the table or the instrument and press Alt-C.

6 Event-based commencements require the approval of the head drafter, unless the event is Royal Assent, Proclamation, the commencement of another Act or legislative instrument or the registration of an instrument.

Reason: This is because this type of commencement provision can be extremely unhelpful to users.

7 Fill out the third column to the extent that the date is known before finalisation.

Reason: To provide as much information as possible.

8 In column 1 of the table, use the abbreviated method of referring to Schedule provisions (e.g. Schedule 3, Part 2, Division 1).

Reason: This is to make the first column easier to read.

9 Get further information from Word Note 3.3.