



**Australian Government**  

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**Department of the Prime Minister and Cabinet**

## **REPORT ON UNPROCLAIMED LEGISLATION**

**August 2016**

Prepared in accordance with Senate standing order 139(2)

## UNPROCLAIMED LEGISLATION

Set out below are details of legislation which is to come into effect on Proclamation and which has not yet been proclaimed. The report shows the latest information available at 1 August 2016.

### AGRICULTURE AND WATER RESOURCES

#### ***Biological Control Amendment Act 2016: Schedule 1***

This Act received Royal Assent on 23 March 2016. Sections 1 to 3 commenced upon Royal Assent. Schedule 1 is to commence on a day fixed by Proclamation.

The *Biological Control Amendment Act 2016* makes amendments to the *Biological Control Act 1984* required to support national programs for the biological control of damaging pests and weeds. It clarifies the definition of 'organism' under the *Biological Control Act 1984* to reflect the use of viruses and sub-viral agents as agent organisms and target organisms for biological control activities.

The *Biological Control Amendment Act 2016* only applies in relation to the Australian Capital Territory (including Jervis Bay Territory). Mirror biological control legislation exists in all States and the Northern Territory. The amendments to the Commonwealth legislation are in the process of being incorporated into State and Northern Territory biological control Acts to maintain consistency of the mirror law scheme, and to support proposed national biological control programs that will use viruses to control damaging pest animals.

Consultation with the States and the Northern Territory on the mirror amendments is needed before Schedule 1 of the *Biological Control Amendment Act 2016* can commence. Progress of the State and Northern Territory legislation is being monitored by the Invasive Plants and Animals Committee, of which the Department of Agriculture and Water Resources is a member. The amendments to New South Wales legislation has been completed. The other jurisdictions expect to complete the legislative amendments by late 2016 or early 2017. The Department of Agriculture and Water Resources expects that the Proclamation will be made before or during the first quarter of 2017, and possibly before, if all amendments to State and Northern Territory legislation have been completed.

#### ***Dairy Produce Amendment (Dairy Service Levy Poll) Act 2016: Schedule 1***

This Act received Royal Assent on 23 March 2016. Sections 1 to 3 commenced upon Royal Assent. Schedule 1 will commence on a single day fixed by Proclamation, or six months after Royal Assent (24 September 2016).

The Act amends the *Dairy Produce Act 1986* to remove the requirement for the dairy industry to hold a dairy levy poll every five years. A Proclamation provision was included to allow early commencement of Schedule 1 of the Act if the subordinate legislation was in place before 24 September 2016.

***Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Act 2016:***  
**Schedule 5**

This Act received Royal Assent on 29 February 2016.

Subsection 2(1) of the Act provides that Schedule 5 commences on a day to be fixed by Proclamation, or, if the provisions do not commence within the period of 6 months beginning on the day the Act receives Royal Assent, they commence on the day after the end of that period.

Schedule 5 of the Act makes amendments to Part 3 of Division 1 of the *AusCheck Act 2007* to clarify and extend the circumstances under which AusCheck can share AusCheck scheme personal information. Specifically, Schedule 5 enables AusCheck to directly share AusCheck scheme personal information with Commonwealth agencies and with State and Territory government agencies performing law enforcement and national security functions.

The provisions will commence at the end of the 6 month period following Royal Assent, that is, on 29 August 2016.

***Measures to Combat Serious and Organised Crime Act 2001: Item 10 of Schedule 4***

This Act received Royal Assent on 1 October 2001.

Subsection 2(4) of the Act provides that item 10 of Schedule 4 commences on a day to be fixed by Proclamation.

Item 10 of Schedule 4 of the Act, if proclaimed, would repeal subsection 23A(6) of the *Crimes Act 1914* which provides that the existing provisions of Part IC of the *Crimes Act 1914* apply to the investigation of certain Australian Capital Territory (ACT) offences.

Since 2001, the ACT has been considering a proposal to enact its own regime for investigating offences (the ACT has enacted its own criminal investigation provisions in other contexts). In April 2010, the ACT began a review of police criminal investigative powers, releasing a discussion paper and forming a Police Powers Steering Committee to consider whether the ACT should enact its own regime for investigative powers. This review is ongoing.

The Proclamation of item 10 of Schedule 4 of the Act (and therefore the repeal of subsection 23A(6) of the *Crimes Act 1914*) is dependent on the ACT enacting legislation. Proclamation will be considered at the conclusion of the ACT review. There is currently no timetable for Proclamation of this item.

## EDUCATION AND TRAINING

### ***Higher Education Support Amendment (VET FEE-HELP Reform) Act 2015: Schedule 2***

This Act received Royal Assent on 11 December 2015.

The Act amends the *Higher Education Support Act 2003* (HESA) to give effect to the Government's decision to strengthen the administration of the VET FEE-HELP loan scheme, protecting students, public monies and the reputation of the broader vocational education and training sector.

Schedule 1 to the Act contains the main amendments effected by the Act (i.e. amendments to relevant provisions of the HESA) and these amendments commenced on 31 December 2015.

Schedule 2 to the Act contains additional amendments to the HESA which are scheduled to commence on Proclamation – with the proviso that, if Proclamation does not occur within 12 months from Royal Assent, Schedule 2 will be repealed.

The amendments proposed by Schedule 2 were additional amendments to the HESA which would have been required in the event that the Higher Education and Research Reform Bill 2014 (Reform Bill) was passed by the Parliament. These changes were minor consequential changes required to ensure efficacy of the Schedule 1 amendments dovetailing with amendments to have been made by the Reform Bill.

As the Reform Bill was negated in the Senate on 17 March 2015, the contemplated amendments in Schedule 2 to the VET FEE-HELP Reform Bill are not required and so Schedule 2 will be automatically repealed on 12 December 2016.

## ENVIRONMENT

### ***Antarctic Treaty (Environment Protection) Amendment Act 2012: Schedule 1, Part 1 and Schedule 2, Part 1***

This Act received Royal Assent on 28 June 2012.

Schedule 1 of the Act implements Measure 4 (2004) adopted by the 27th Antarctic Treaty Consultative Meeting at Cape Town on 4 June 2004 by amending the *Antarctic Treaty (Environment Protection) Act 1980*. The purpose of the Schedule is to provide the Minister with the ability to grant a safety approval and to implement new offences and civil penalties regarding unapproved activities.

Schedule 1, Part 1, contains the provisions related to the granting of safety approvals and commences on the earlier of:

- a day fixed by Proclamation; and
- the day Measure 4 (2004) comes into force for Australia.

Measure 4 (2004) will not come into force for Australia until all Antarctic Treaty Consultative Parties have approved the measure. The provision to allow for early Proclamation of Schedule 1, Part 1 is to enable non-State operators to apply for, and be granted, a safety approval in advance of the offence and civil penalty provisions which commence automatically when Measure 4 (2004) comes into force. When it becomes apparent that Measure 4 (2004) will come into force, the commencement of Schedule 1, Part 1 will be proclaimed. If the Proclamation is not made, the Part will commence automatically when Measure 4 (2004) comes into force. At this time it is unlikely that Measure 4 (2004) will come into force in the near future, because it is likely that it will be some years before all Antarctic Treaty Consultative Parties approve the measure.

Schedule 2 of the Act implements Measure 1 (2005) adopted by the 28th Antarctic Treaty Consultative Meeting at Stockholm on 17 June 2005. The purpose of the Schedule is to implement Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty: Liability arising from environmental emergencies. This includes the ability for the Minister to grant an environmental protection approval and to implement new offences and civil penalties regarding unapproved activities. Schedule 2, Part 1, contains the provisions related to the granting of an environmental protection approval.

Schedule 2, Part 1 of the Act commences on the earlier of:

- a day fixed by Proclamation; and
- the day Measure 1 (2005) comes into force for Australia.

Measure 1 (2005) will not come into force for Australia until all Antarctic Treaty Consultative Parties have approved the measure. The provision to allow for early Proclamation of Schedule 2, Part 1 is to enable operators to apply for, and be granted, an environmental protection approval in advance of the offence and civil penalty provisions which commence when Measure 1 (2005) comes into force.

When it becomes apparent that Measure 1 (2005) will come into force, the commencement of Schedule 2, Part 1 will be proclaimed. At this time it is unlikely that Measure 1 (2005) will come into force in the near future, because it is likely that it will be some years before all Antarctic Treaty Consultative Parties approve the measure.

<b>FOREIGN AFFAIRS AND TRADE</b>
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***Comprehensive Nuclear-Test-Ban Treaty Act 1998: Part 3, Divisions 2 and 3 of Part 4 and sections 66, 67, 73, 76 and 77***

This Act received Royal Assent on 2 July 1998.

Part 3 and Divisions 2 and 3 of Part 4 of the Act will commence on the day on which the Comprehensive Nuclear-Test-Ban Treaty enters into force for Australia. Sections 66, 67, 73, 76 and 77 will commence on a day or days to be fixed by Proclamation, or, if these provisions do not commence before the day on which the Treaty enters into force for

Australia, the provisions commence on that day. The Minister must announce by notice in the *Gazette* the day on which the Treaty enters into force for Australia.

Part 3 provides for: Organization inspectors to inspect sites in Australia; Australia to respond (including by inspecting sites in Australia) to another State Party's request for clarification about compliance with the Treaty; and searches for and seizures of evidence relating to offences. Part 3 also deals with inspection warrants, and the conduct of inspections and has some general rules about warrants.

Division 2 of Part 4 provides for access to facilities, inspection of land, and establishment of facilities and maintenance of facilities. Division 3 of Part 4 provides rules for exercising Division 2 powers.

Section 66 designates who is a national inspector and section 67 outlines the requirements for identity cards of national inspectors. Section 73 permits regulations to be made conferring privileges and immunities on the Organization and associated persons. Section 76 is a disclaimer of liability for acts or omissions by the Organization or an Organization inspector. Section 77 confers legal personality and capacity on the Organization.

These provisions deal with Australia's relationship with the future Comprehensive Nuclear-Test-Ban Treaty Organization and inspections functions of the Organization – matters which will be relevant only after the entry into force of the Treaty for Australia.

The Treaty will enter into force 180 days after the 44 states listed in Annex 2 to the Treaty have deposited their instruments of ratification with the Secretary-General of the United Nations. At 11 August 2016, the Treaty has been signed by 183 countries and ratified by 164. Of the 44 listed states, 36 have ratified. Australia's instrument of ratification was deposited on 9 July 1998.

## HEALTH

### ***Australian Immunisation Register (Consequential and Transitional Provisions) Act 2015: Schedule 2***

This Act received Royal Assent on 12 November 2015.

The *Australian Immunisation Register (Consequential and Transitional Provisions) Act 2015* provides a consolidated framework to implement and operate all national immunisation registers in Australia. The Act has a staged implementation based on the schedule to expand Australia's immunisation registers.

Schedule 2 of the Act commences on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day the Act received Royal Assent, they commence on the day after the end of that period.

The unproclaimed provisions under Schedule 2 within the *Australian Immunisation Register (Consequential and Transitional Provisions) Act 2015* allow for the capture of immunisation

records for individuals of any age (not just young individuals of up to 20 years of age as currently legislated) and amends the name of the Australian Childhood Immunisation Register (ACIR) to that of the expanded register, the Australian Immunisation Register. Minor terminology references are also included to remove 'young individual' and include all 'individuals'.

The commencement of Schedule 2 is to align with the implementation of the expansion of the ACIR, which is scheduled for 30 September 2016 at which point a Proclamation will be issued.

***Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Act 2016: Schedule 1, Part 2***

This Act received Royal Assent on 11 February 2016.

Schedule 1, Part 2 commences on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day the Act receives the Royal Assent, they do not commence at all.

Schedule 1, Part 2 in the *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Act 2016* relates to changing the name of the Australia and New Zealand Food Regulation Ministerial Council to the Australia and New Zealand Ministerial Forum on Food Regulation. Schedule 1, Part 1 of the Act also relates to this change of name and commenced on 12 February 2016.

The delay in commencement for Schedule 1, Part 2 of the Act was intended to provide time to amend the Food Regulation Agreement to include the new name for the Australia and New Zealand Food Regulation Ministerial Council. This process requires consultation with all Australian States and Territories and can be lengthy.

However, it is intended that Schedule 1, Part 2 of the Act be proclaimed by February 2017.

***Health Practitioner Regulation (Consequential Amendments) Act 2010: Schedule 1***

This Act received Royal Assent on 31 May 2010.

Schedule 1 commences on a single day to be fixed by Proclamation.

Schedule 1 is the operative part of the Act and provides for consequential amendments to the *Health Insurance Act 1973* (the HI Act) and the *Crimes Act 1914* to recognise and support the implementation of the National Registration and Accreditation Scheme (NRAS) for health professions.

Part of a Council of Australian Governments' intergovernmental agreement signed in March 2008, the NRAS is designed to reduce red tape and address the current inconsistencies in registration standards between the States and Territories. The legislative

framework for the NRAS is an applied laws model by the States and Territories. The Commonwealth is not required to apply any laws.

Specifically, the unproclaimed provisions in this Act will update definitions to assist in the recognition of health practitioners for the purposes of Medicare and other Commonwealth legislation. The provisions will also streamline current specialist and consultant physician recognition processes for the purposes of Medicare, including removing the current Vocational Register for general practitioners and by aligning data processes and systems used by both the Australian Health Practitioner Regulation Agency and the Department of Human Services. This alignment has not yet been possible to achieve. Until that time, existing arrangements will continue to apply.

The Commonwealth's *Health Practitioner Regulation (Consequential Amendments) Act 2010* received Royal Assent on 31 May 2010. The process for developing the required amendments to Regulations made under the HI Act has been complex in ensuring that the changes will not result in any disadvantage to medical practitioners' Medicare eligibility. The amendments to the Commonwealth legislation (and associated regulations) will commence on a date to be proclaimed, and this will occur only in the situation where the Government intends to make the relevant amendments to the Regulations.

### ***Narcotic Drugs Amendment Act 2016: Schedules 1 and 3-5***

This Act received Royal Assent on 29 February 2016.

Schedule 1 and Schedules 3 to 5 commence on a single day to be fixed by Proclamation or, if the provisions do not commence within the period of 8 months beginning on the day of Royal Assent, they commence on the day after that period. This is 30 October 2016.

Schedule 2 commenced, by Proclamation, on 1 May 2016.

Schedule 1 is the operative part of the Act and includes provisions for the licensing of cultivation of cannabis for medicinal use in Australia. It also updates and modernises provisions relating to the manufacture of narcotics, making them consistent with the cultivation provisions and allowing them to work together to control the amount of cannabis grown and manufactured. The amendments are consistent with Australia's obligations under the Single Convention for Narcotic Drugs 1961. Principal among these obligations are:

- ensuring that cultivation of cannabis is for medicinal or related scientific purposes only
- preventing the diversion of any cannabis or cannabis product from these purposes
- preventing the accumulation of cannabis or cannabis products

Schedule 3 contains the transitional arrangements and is not operative without Schedule 1. Schedule 4 amends the Schedules to the *Narcotic Drugs Act 1967* to include an updated version of the Single Convention for Narcotic Drugs 1961 and has no specific legal force in isolation. Schedule 5 contains consequential amendments to the *Therapeutic Goods Act 1989* to control the approvals of the supply of unregistered therapeutic goods under Section 19 of that Act.



It is not intended to commence these provisions by Proclamation. The delay in commencement is to allow the development and approval of supporting regulations, as well as the underlying guidance material for prospective licensees. The guidance must be consistent with the supporting regulations. It is important that potential applicants are given sufficient time to familiarise themselves with the requirements of the scheme so that they are able to arrange their business affairs appropriately in time for the commencement of the scheme.

***Tobacco Advertising Prohibition Act 1992: Subsections 17(2) to 17(5) and sections 23 to 25***

This Act received Royal Assent on 24 December 1992.

Subsections 17(2) to 17(5) and sections 23 to 25 commence on a single day to be fixed by Proclamation.

Under subsection 17(1) a publication which is printed outside Australia and which is not principally intended for the Australian market, can be imported into Australia and sold, even if the publication contains a tobacco advertisement. Tobacco advertising in imported periodicals is exempt so that these publications may continue to be available in the Australian market. Should it appear that tobacco companies are exploiting this exemption, subsections 17(2) to 17(5) and sections 23 to 25 will be proclaimed.

Should these provisions be proclaimed, subsection 17(1) will continue to allow the importation and sale of periodicals which contain tobacco advertisements. Proclamation will permit the Minister, in accordance with subsection 17(2), to specify periodicals, or classes of periodicals, to be excluded from the exemption in subsection 17(1). Subsections 17(3) to 17(5) relate to the administrative details for this process.

Once the Minister specifies a periodical under subsection 17(2), it then becomes an offence under section 23 to import that periodical. A periodical for which a notice is in force under subsection 17(2) can still be imported by a person for private use (under section 24) or for use in exempted libraries (under section 25).

<b>INDUSTRY, INNOVATION AND SCIENCE</b>
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***Intellectual Property Laws Amendment Act 2015: Schedule 4***

This Act received Royal Assent on 25 February 2015.

Schedule 4 of the Act commences on a single day to be fixed by Proclamation. The unproclaimed provisions in Schedule 4 of the Act make amendments to the *Patents Act 1990* to implement patent-related initiatives under the Australia New Zealand Single Economic Market, including a single trans-Tasman patent attorney regime. Commencement is dependent on the passage of corresponding legislation in New Zealand, which is expected to occur by the end of 2016. If the provisions do not commence within the period

of 24 months beginning on the day after the Act received Royal Assent, the provisions will automatically be repealed on the day after the end of that period.

## INFRASTRUCTURE AND REGIONAL DEVELOPMENT

### ***Interstate Road Transport Act 1985: Sections 24 to 35, subsections 36(1) and 36(5) and section 37***

This Act received Royal Assent on 22 November 1985.

Sections 24 to 35, subsections 36(1) and 36(5) commence on a day (or days) to be fixed by Proclamation.

Sections 24 to 35 relate to a scheme of operator licensing. At the time this legislation was framed it was considered that operator licensing might be a suitable tool for raising operational and safety standards in the road transport industry. To be effective, the scheme requires the full agreement of the industry and passage of complementary legislation by the States and Territories. States and Territories did not agree to enact complementary legislation to enable the national application of operator licensing, and with the passage of time the underlying objectives of operator licensing were sought through alternative means.

Commonwealth and State and Territory transport ministers agreed to a national alternative compliance policy in November 1997. In September 1999, ministers voted on model legislation for the three modules (mass management, maintenance management and fatigue management). These alternative compliance arrangements were enacted by jurisdictions as part of the National Heavy Vehicle Accreditation Scheme, which itself forms part of the Heavy Vehicle National Law. This scheme is preserved for participating jurisdictions under chapter 8 of the Heavy Vehicle National Law. Rather than the loss of a license to operate if standards/laws are not met, this approach gives transport operators economic incentives to comply with road transport law.

Subsections 36(1), 36(5) and section 37 relate to the use of onboard driver monitoring devices. The Transport and Infrastructure Council is considering a range of measures that may impact on future deployment of this type of technology.

In line with the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform signed by First Ministers on 19 August 2011, the *Interstate Road Transport Act 1985* will be repealed following the introduction in all participating jurisdictions of a National Registration Scheme under the Heavy Vehicle National Law. The National Law has been proclaimed (excluding chapter 2) in the participating jurisdictions of Queensland, New South Wales, Victoria, Tasmania, South Australia and the Australian Capital Territory. Ministers have agreed that the National Registration Scheme in the Heavy Vehicle National Law will commence 1 July 2018.

***Marine Safety (Domestic Commercial Vessel) National Law (Consequential Amendments) Act 2012: Schedule 2***

This Act received Royal Assent on 12 September 2012. The legislation is still unproclaimed and there is no change to the current situation.

Schedule 2 of the Act provides that Schedule 2 commences on a single day to be fixed by Proclamation. The Proclamation must not specify a day that occurs before the first day there are in force, in each State, laws of the State that the Minister is satisfied correspond substantially to Part 2 of the *Work Health and Safety Act 2011*. However, if the provision(s) do not commence within the period of 6 months beginning on that first day, they commence on the day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the Gazette the day the provision(s) commenced. The notice is not a legislative instrument.

The intention of legislation is to align the provisions under Schedule 2 of the Act with the Commonwealth's model *Work Health and Safety Act 2011*. As such, Schedule 2 of the Act, which would set requirements for breaches of general safety duties, can commence when all the States and Territories give effect to, as a State law, the provisions contained in Part 2 of the *Work Health and Safety Act 2012*. The Department of Employment has advised that Victoria and Western Australia have not yet enacted legislation that corresponds substantially to Part 2 of the *Work Health and Safety Act 2011*.

***Maritime Transport and Offshore Facilities Security Amendment (Inter-State Voyages) Act 2016: Schedule 1***

This Act received Royal Assent on 10 February 2016.

Schedule 1 commences on a day fixed by Proclamation. However, if the Schedule does not commence within six months beginning on the day of Royal Assent, the Schedule commences on the day after the six-month period ends. This is 10 August 2016.

The provisions in the Schedule amend the *Maritime Transport and Offshore Facilities Security Act 2003* to provide that Australian ships used solely for inter-state voyages are no longer regulated under that Act.

It was decided to let the Schedule commence at the end of the six-month period to give ship operators time to prepare for the new system and allow time for changes to administrative processes.

Proclamation is no longer required.

***Insolvency Law Reform Act 2016: Schedule 1, Schedule 2, items 1-93, 95-302 and 304-322 and Schedule 3***

This Act received Royal Assent on 29 February 2016.

With minor exceptions, the whole Act commences on a day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months of Royal Assent, they commence on 1 March 2017.

The Act amends the *Bankruptcy Act 1966* and the *Corporations Act 2001* to: remove unnecessary costs and increase efficiency in insolvency administrations; enhance communication and transparency between stakeholders; promote market competition on price and quality; improve professionalism and competence of insolvency practitioners; and remove unnecessary costs from the insolvency industry.

The amendments are dependent upon the making of various regulations and rules. Drafting of these instruments have not been completed, consulted upon or made.

Given these delays and the need for industry to have time to implement changes to processes and software systems once the detail of these instruments is settled, a commencement prior to 1 March 2017 is not contemplated.