



Australian Government

Department of the Prime Minister and Cabinet

REPORT ON UNPROCLAIMED LEGISLATION

August 2018

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 2018.

ATTORNEY-GENERAL'S

Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018: Schedule 1, Part 2 of Schedule 2 and Schedule 4

This Act received Royal Assent on 22 May 2018.

Items 2, 4, and 7 in column 1 of section 2 of the Act provide for Schedule 1, Part 2 of Schedule 2 and Schedule 4 respectively to commence on 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 the Act receives Royal Assent, they commence on the day after the end of that period.

Schedule 1 will ensure that both the formal and informal assistance that Australia can currently provide to foreign countries can also be provided to the International Criminal Court (ICC) and international war crimes tribunals (IWCTs). Australia's ability to provide assistance in criminal matters to the ICC and IWCTs is presently more limited than our ability to assist foreign countries under the *Mutual Assistance in Criminal Matters Act 1987* (MA Act). The amendments in Schedule 1 of the Act are confined to providing assistance to the ICC and IWCTs for investigating and prosecuting offences within their jurisdiction. Further, the assistance would be subject to the same processes as currently apply to the assistance provided to foreign countries under the MA Act, and on an agency-to-agency basis, and to similar safeguards as apply to the use of these powers for foreign and domestic law enforcement purposes.

Schedule 1 has not yet been proclaimed, pending the making of Regulations to give effect to procedural matters under this Schedule. It is proposed this Schedule commence in accordance with the six month automatic commencement in section 2, rather than by Proclamation.

Part 2 of Schedule 2 will make amendments to the MA Act relating to the assistance that Australia can provide in response to a mutual assistance request from a foreign country in a criminal matter. These amendments clarify the role of judicial officers in proceedings to take evidence from witnesses in Australia on behalf of foreign countries. Part 2 of Schedule 2 has not yet been proclaimed, pending the making of Regulations to give effect to procedural matters required under this Schedule.

Part 2 of Schedule 2 has not yet been proclaimed, pending the making of Regulations to give effect to procedural matters required under this Schedule. It is proposed the Schedule commence in accordance with the six month automatic commencement in section 2, rather than by Proclamation.

Schedule 4 will make amendments to the *Foreign Evidence Act 1994* (FE Act) relating to the external territories and the Jervis Bay Territory, and the certification of material received from a foreign country. These amendments extend the application of Part 3 of the FE Act to certain criminal and related civil proceedings in the external territories and the Jervis Bay Territory. These amendments also ensure there is a process in the FE Act to certify material received from a foreign country in response to a mutual assistance request in terrorism-related proceedings so that the certification is prima facie evidence of the fact of such receipt, and will modify who can issue certificates under Part 3 of the FE Act and how these people are authorised to do so. They will also make consequential amendments to the certificate provisions in Part 4 of the FE Act regarding certificates for use in certain civil proceedings and proceedings to which ASIC are a party, to align all of the certificate provisions.

Schedule 4 has not yet been proclaimed, pending the making of Regulations to give effect to procedural matters required under this Schedule. It is proposed the Schedule commence in late 2018 in accordance with the six month automatic commencement in section 2, rather than by Proclamation.

Foreign Influence Transparency Scheme Act 2018: the whole of the Act

This Act received Royal Assent on 29 June 2018.

Section 2 of the Act provides that the whole of the Act will commence on a single day to be fixed by Proclamation. However, if the provisions in the Act do not commence within the period of 12 months beginning on the day the Act receives Royal Assent, the provisions will commence on the day after the end of that period.

The Act provides for the establishment of the Foreign Influence Transparency Scheme.

The Act has not yet been proclaimed, as administrative and other arrangements need to be established to support the scheme before these provisions can commence. This includes putting in place rules around disclosures that must be made in connection with communications activities, determining the content of approved forms for registrants and implementing administrative arrangements for the issue of transparency notices.

National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018: Schedule 2

This Act received Royal Assent on 29 June 2018.

Item 3 in column 1 of section 2 of the Act provides for Schedule 2 to commence on 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 Royal Assent, they commence on the day after the end of that period.

Schedule 2 introduces a suite of new Commonwealth secrecy offences into the Criminal Code.

Schedule 2 has not yet been proclaimed, as Regulations in relation to the definition of 'proper place of custody' need to be implemented before these offences can commence.

ENVIRONMENT AND ENERGY

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. Early proclamation of Schedule 1, Part 1 will 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. 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. Early proclamation of Schedule 2, Part 1 will 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.

Great Barrier Reef Marine Park Amendment (Authority Governance and Other Matters) Act 2018: Schedule 1

This Act received Royal Assent on 5 March 2018.

Schedule 1 of the Act commences on a single day to be fixed by Proclamation or, if the provisions do not commence within the period of twelve months beginning on the day of Royal Assent, they commence on the day after that period. This is 6 March 2019.

This Act amends the *Great Barrier Reef Marine Park Act 1975* (the GBRMP Act) to change the governance size and structure of the Great Barrier Reef Marine Park Authority (the Authority) and strengthen requirements for appointment and termination of members. The purpose of the amendments is to strengthen the strategic capability and capacity of the Authority to respond to challenges facing the Great Barrier Reef Marine Park.

Schedule 1 of the Act amends the GBRMP Act to implement a new governance model for the Authority to ensure the Authority has access to skills and expertise commensurate with its functions. This includes increasing the size of the Authority's board from five to seven members, through separation of the Chairperson and Chief Executive Officer roles and creation of one additional part-time member position. The Act strengthens requirements for appointment and termination of members by: reducing the potential for conflicts of interest; limiting the number of consecutive terms served by an individual member; and providing for termination of members by the Governor-General for underperformance. Schedule 1 also makes consequential amendments to the *Environment Protection and Biodiversity Conservation Act 1999*.

Schedule 1 of the Act commences on a day to be fixed by Proclamation in order to provide sufficient time to recruit appropriately qualified individuals for the new positions of part-time Chairperson and full-time Chief Executive Officer for appointment by the Governor-General. Recruitment for these positions is underway. Aligning the commencement of Schedule 1 with the appointment of the new Chairperson and CEO provides for a smooth transition to the new governance arrangements.

It is intended that a proclamation will be made before September 2018, fixing the commencement date of Schedule 1 of the Act for before the current acting Chairperson's term expires on 31 October 2018.

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 16 July 2018, the Treaty has been signed by 183 countries and ratified by 166. Of the 44 listed states, 36 have ratified. Australia's instrument of ratification was deposited on 9 July 1998.

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 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 process for developing the required amendments to Regulations made under the HI Act has been complex because of the need to ensure 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.

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).

HOME AFFAIRS

Commerce (Trade Descriptions) Amendment Act 2018: Schedule 2

This Act received Royal Assent on 29 June 2018.

Schedule 2 to the Act commences on a single day to be fixed by Proclamation or, if Proclamation is not made earlier, the day after the period of six months beginning on the day the Act receives Royal Assent.

Schedule 2 to the Act, if proclaimed, would insert new subsections 7(3A) and (3B) into the *Commerce (Trade Descriptions) Act 1905*. These subsections will enable regulations that prohibit the importation or introduction into Australia of goods unless there is applied to them a prescribed trade description, to incorporate the information standard under Schedule 2 to the *Competition and Consumer Act 2010*.

Schedule 2 of the Act will commence at the end of the six month period following Royal Assent of the Act, that is, 29 December 2018. The six month period will allow the Department of Home Affairs to develop the necessary regulations to incorporate the information standard and make administrative arrangements.

Migration Amendment (Skilling Australians Fund) Act 2018: Schedule 1

This Act received Royal Assent on 22 May 2018.

Subclause 2(1) of the Act provides that Schedule 1 to the Act will commence on 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 Royal Assent, they commence the day after the end of that period (23 November 2018).

Schedule 1 to the Act amends the *Migration Act 1958* to:

- require employers who nominate a worker under the temporary and permanent skilled migration programs to pay the nomination training contribution charge imposed by the *Migration (Skilling Australians Fund) Charges Act 2018*;
- allow nominations to be accepted from persons that have applied to be an approved sponsor, or have entered into negotiations for a work agreement; and
- allow the Minister to determine, by legislative instrument, the manner in which labour market testing in relation to a nominated position must be undertaken, and the kinds of evidence that must accompany a nomination.

Schedule 1 to the Act is proposed to commence by Proclamation on 12 August 2018 to align with the proposed commencement of supporting regulations. Proclamation of Schedule 1 will trigger commencement of certain provisions in Schedule 2 to the Act and sections 3 to 10 of the *Migration (Skilling Australians Fund) Charges Act 2018*.

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

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.

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.

In line with the commencement of new heavy vehicle registration arrangements from 1 July 2018, the Parliament passed the Interstate Road Transport (Repeal) Bill on 10 May 2018 (Royal Assent 22 May 2018). The *Interstate Road Transport (Repeal) Act 2018*

repeals the *Interstate Road Transport Act 1985* (including unproclaimed elements) and the *Interstate Road Transport Charge Act 1985* on 1 July 2019.

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 they 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 the 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*.

Victoria and Western Australia have not yet enacted legislation that corresponds substantially to Part 2 of the *Work Health and Safety Act 2011*. Western Australia is considering options to implement elements of the model WHS Regulations, while the Victorian Government has confirmed it will not implement the model WHS laws in their current form.

SOCIAL SERVICES

Crimes Amendment (National Disability Insurance Scheme-Worker Screening) Act 2018: Schedule 1

The Act received Royal Assent on 22 May 2018.

Subsection 2(1) of the Act provides that Schedule 1 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 1 contains amendments to Part VIIC of the *Crimes Act 1914*, so that convictions of persons who work, or seek to work, with people with disability in the National Disability Insurance Scheme (NDIS), can be disclosed to, and taken into account by, Commonwealth, State and Territory agencies, to enable State and Territory worker screening units to determine whether the person is suitable to work with people with disability in the NDIS.

Before the Commonwealth can begin disclosing information to state and territory worker screening units for the purpose of NDIS worker screening, state and territory worker screening units need to satisfy the Minister that they have met the criteria in section 85ZZGL of the Act, before they can become a 'prescribed person or body' under Commonwealth regulations for this purpose. This includes a requirement that state and territory worker screening units have a legislative basis to obtain and deal with information about persons who work, or seek to work, with a person with disability. The amendments to Part VIIC of the Act are of no effect until state and territory worker screening units are prescribed under Commonwealth regulations.

Given relevant state and territory worker screening units are still in the process of progressing NDIS worker screening legislation and implementing new processes within their jurisdiction, (in accordance with the relevant Intergovernmental Agreement on NDIS Worker Screening), it was considered necessary to provide the states and territories with sufficient time to prepare for the commencement of worker screening in their jurisdiction.

TREASURY

Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018: Schedule 3

The Act received Royal Assent on 5 March 2018.

Schedule 3 of the *Treasury Laws Amendment (Putting Consumers First-Establishment of the Australian Financial Complaints Authority) Act 2018* (AFCA Act) commences on a day or days to be fixed by Proclamation. However if any of the provisions do not commence within the period of 4 years beginning on the day this Act receives Royal Assent, they commence on the day after the end of that period.

The amendments in Schedule 3 of the AFCA Act repeal the *Superannuation (Resolution of Complaints) Act 1993*, which support the operation of the Superannuation Complaints Tribunal (SCT).

The AFCA Act introduces the Australian Financial Complaints Authority scheme which once fully operational will replace the SCT. The AFCA Act provides for a transition period for the SCT to finalise any complaints. This will include dealing with any complaints which are remitted back to the SCT from the Federal Court during the transition period. The exact length of time required for the Federal Court to finalise any appealed complaints and remit these back to the SCT for implementation of a decision is uncertain and not within the Government's control.

A Proclamation would only be made if the Treasury were confident that all such complaints have been dealt with and the SCT is no longer required. As such it is unlikely that this Proclamation will be made. The better approach is to rely on the automatic repeal of the *Superannuation (Resolution of Complaints) Act 1993* after 4 years (which will occur if a Proclamation is never made).

Corporations Amendment (Asia Region Funds Passport) Act 2018: Schedules 1, 2, 2A and 3

This Act received Royal Assent on 29 June 2018.

Schedules 1, 2, 2A and 3 commence on a day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives Royal Assent, they commence on the day after the end of that period.

Schedules 1, 2, 2A and 3 provide a multilateral framework that allows eligible funds to be marketed across economies participating in the Asia Region Funds Passport with limited additional regulatory requirements.

The reason for setting the commencement date by Proclamation is to ensure that the amendments in the *Corporations Amendment (Asia Region Funds Passport) Act 2018*, the amendments to the Corporations Regulations 2001 and other relevant regulations, and the Passport Rules (which are to be made by the Minister for Revenue and Financial Services by legislative instrument) commence at the same time. The amending regulations and the Passport Rules are currently under development.

The commencement will be proclaimed after the amending regulations and Passport Rules are made.