



Australian Government

Department of the Prime Minister and Cabinet

REPORT ON UNPROCLAIMED LEGISLATION

August 2019

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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 2019.

AGRICULTURE

Imported Food Control Amendment Act 2018: Schedule 1, Part 1 and Schedule 1, Part 6

This Act received Royal Assent on 21 September 2018.

Items 2 and 5 in column 1 of section 2 provide for Schedule 1, Part 1 and Schedule 1, Part 6 respectively to commence 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 Royal Assent, they commence on the day after the end of that period.

Part 1 of Schedule 1 provides that the Secretary may determine a specified certificate issued by a specified person or body for food of a particular kind is a recognised food safety management certificate (FSMC). FSMCs allow importers to produce documentation to demonstrate the effective intentionally recognised food safety controls that are in place throughout the supply chain for food safety.

Part 1 of Schedule 1 has not yet been proclaimed to enable Australian food importers sufficient notice and opportunity to prepare for the introduction of FSMC. It is proposed that Part 1 of Schedule 1 commence on 21 September 2019 as provided for in section 2.

Part 6 of Schedule 1 will require that the owners of imported food at the time of importation maintain records containing information determined by the Secretary to maintain traceability of the food. New provisions of Part 6 will enable the Secretary to request the production of records, as well as inspecting, copying and retaining records.

Part 6 of Schedule 1 has not yet been proclaimed to enable Australian food importers sufficient notice and opportunity to prepare for the introduction of traceability requirements. It is proposed that Part 6 of Schedule 1 commence on 21 September 2019 as provided for in section 2.

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.

FINANCE

Future Drought Fund Act 2019: the whole of the Act

This Act received Royal Assent on 30 July 2019.

The whole of the Act is to commence on a single day to be fixed by Proclamation. If no Proclamation is made, the Act will commence 6 months after Royal Assent.

The Act establishes the Future Drought Fund, a Commonwealth investment fund designed to fund initiatives that enhance future drought resilience, preparedness and response across Australia.

The Act has not been proclaimed to date because the legislation received Royal Assent on 30 July 2019. A number of steps need to be taken in order to establish the Future Drought Fund, including setting up special accounts and facilitating the transfer of cash and assets into the fund, both of which take some time and coordination.

Preparations are underway to achieve a Proclamation date of 1 September 2019.

FOREIGN AFFAIRS AND TRADE

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 4 July 2019, the Treaty has been signed by 184 countries and ratified by 168. Of the 44 listed states, 36 have ratified. Australia's instrument of ratification was deposited on 9 July 1998.

HEALTH

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* and the *Crimes Act 1914* to recognise and support the implementation of the National Registration and Accreditation Scheme for health professions.

Part of a Council of Australian Governments' intergovernmental agreement signed in March 2008, the National Registration and Accreditation Scheme is designed to reduce red tape and address inconsistencies in registration standards between the States and Territories. The legislative framework for the Scheme 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 Services Australia. 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 *Health Insurance Act 1973* has been complex because of the need to ensure that the changes will not result in any disadvantage to medical practitioners' Medicare eligibility.

My Health Records Amendment (Strengthening Privacy) Act 2018: Schedule 2

This Act received Royal Assent on 10 December 2018.

Schedule 2 of the Act commences on a single day to be fixed by Proclamation or, if the provisions do not commence within 12 months beginning on the day after the Act receives Royal Assent, they commence on the day after the end of that period. This is 11 December 2019.

Schedule 2 of the Act will amend the *My Health Records Act 2012* in relation to the use of My Health Record data for research or public health purposes. At present, a function of the My Health Record System Operator (i.e. the Australian Digital Health Agency) is to prepare and provide de-identified data for research or public health purposes (paragraph 15(ma) of the *My Health Records Act 2012*), and individuals can consent to the use of health information in their My Health Record for any purpose (including for research or public health purposes). The amendments in Schedule 2 will give legislative effect to the Framework to guide the secondary use of My Health Record system data (the Framework) and ensure that the privacy of individuals' information – whether it is health information being used with consent or de-identified data – is maintained and the use of that information is regulated. The amendments would also make the Australian Institute of Health and Welfare the data custodian of My Health Record data for this purpose.

On 11 May 2018, the Minister for Health, the Hon Greg Hunt MP, announced the release of the Framework and stated that no data from the My Health Record would be released until at least 2020. The delayed commencement of Schedule 2 was intended to provide time for the Department of Health to implement robust governance arrangements – in particular, to facilitate the appointment of members of the Data Governance Board that will be established by the amendments, and to formalise procedural and administrative arrangements for the handling of data in the circumstances.

The Department of Health continues to work closely with the Australian Digital Health Agency (the My Health Record System Operator) and the Australian Institute of Health and Welfare towards finalising these arrangements, including the development of My Health Records Rules to further regulate the use of My Health Record data for research and public health purposes. The department will undertake public consultation on the development of these Rules.

Tobacco Advertising Prohibition Act 1992: Subsections 17(2) to 17(4) and sections 23 to 25

This Act received Royal Assent on 24 December 1992.

Subsection 2(2) provides that 17(2) to (5) and sections 23 to 25 commence on a single day to be fixed by Proclamation. Subsection 17(5) was repealed in 2016 and therefore will never commence.

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(4) 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(4) 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

Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019: Schedules 2 and 4

This Act received Royal Assent on 1 March 2019.

Subsection 2(1) of the Act provides that Schedule 2 and Schedule 4 to the Act will each 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.

Schedule 2 to the Act amends the *Migration Act 1958* to allow the Department of Home Affairs to use an online account such as ImmiAccount to provide clients with certain legally required communications.

Schedule 4 to the Act amends the *Passenger Movement Charge Collection Act 1978* to insert a new head of power so that regulations can prescribe the charging and recovery of fees for, and in relation to, the payment of passenger movement charge or an amount equal to the charge.

It is intended that both Schedules will commence at the end of the six month period following Royal Assent of the Act. The six month period will allow the Department of Home Affairs to make the necessary administrative arrangements to implement these measures when required.

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 to 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.

INDUSTRY, INNOVATION AND SCIENCE

Space Activities Amendment (Launches and Returns) Act 2018: the whole of the Act

This Act received Royal Assent on 31 August 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 do not commence within the period of 12 months beginning on the day this Act receives Royal Assent, they commence on the day after the end of that period.

The Act provides greater clarity and flexibility for the Australian space industry. It reflects consideration of removal of barriers to participation in activities, encouraging innovation and entrepreneurship, the safety of activities and the risk of damage to persons and property as a result of activities, and the implementation of certain obligations under the United Nations Space Treaties.

Recognising the rapid technological development in the space sector, the Act broadens the regulatory framework to specifically include launches from aircraft in flight and provides for launches of high power rockets. It also streamlines the approvals processes and insurance requirements for launches and returns.

The Act has not yet been proclaimed, as a suite of legislative instruments (Rules) to support the effective operation of the amended Act needed to be developed. The rules will include information that an applicant will need to provide when applying for different licences, permits and authorisations, insurance requirements and conditions for certain permits and licences. Recognising the importance of the rules, consistent with future growth of the Australian space industry, as well as ensuring the safety of the Australian community, the Australian Space Agency (Agency) undertook public consultation on the draft rules in May – June 2019.

The Act will come into effect on 31 August 2019 in accordance with the 12 month automatic commencement, rather than by Proclamation. Three sets of rules will be made. Two will come into effect the same day as the Act commences, the third will have a delayed commencement.

- Space (Launches and Returns) (General) Rules 2019.
- Space (Launches and Returns) (Insurance) Rules 2019.
- Space (Launches and Returns) (High Power Rocket) Rules 2019. This set of rules will have a delayed commencement.

INFRASTRUCTURE, TRANSPORT, CITIES AND REGIONAL DEVELOPMENT

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.

Section 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 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 2011*.

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.

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

This 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 the 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).