

# Regulatory Powers Legislation Amendment (Standardisation Reform) Regulations 2018

## EXPLANATORY STATEMENT

Issued under the Authority of the Attorney-General

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### OUTLINE

The *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act) provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as civil penalties, infringement notices, enforceable undertakings and injunctions. The Regulatory Powers Act commenced on 1 October 2014, but only has effect where Commonwealth Acts are drafted or amended to trigger its provisions.

The *Regulatory Powers (Standardisation Reform) Act 2017* (the Reform Act) amends 15 Commonwealth Acts to repeal existing provisions providing for regulatory regimes and to instead apply the standard provisions of the Regulatory Powers Act. The relevant Schedules to the Reform Act have commenced, or will commence, on various dates leading up to the default commencement date of 6 November 2018.

The purpose of the *Regulatory Powers Legislation Amendment (Standardisation Reform) Regulations 2018* (the Regulations) is to repeal or amend various provisions of four regulations relating to regulatory powers to avoid duplication and potential inconsistencies between the four principal Acts and the regulations. The Regulations are also consequential to commencement of Schedules 2, 3, 9 and 10 to the Reform Act, respectively. These Schedules amend the principal Acts under which each of the four regulations are made, to apply the standard provisions of the Regulatory Powers Act.

The relevant provisions under the four principal Acts giving the power to the Governor-General to make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to that Act, are:

- Section 79 of the *Australian Sports Anti-Doping Authority Act 2006*;
- Section 72 of the *Building Energy Efficiency Disclosure Act 2010*;
- Section 86 of the *Illegal Logging Prohibition Act 2012*; and
- Section 111 of the *Industrial Chemicals (Notification and Assessment) Act 1989*.

The four regulations amended by the Regulations are:

- the *Australian Sports Anti-Doping Authority Regulations 2006*;
- the *Building Energy Efficiency Disclosure Regulations 2010*;
- the *Illegal Logging Prohibition Regulation 2012*; and
- the *Industrial Chemicals (Notification and Assessment) Regulations 1990*.

### PROCESSES FOR REVIEW OF THESE REGULATIONS

The Regulations are subject to tabling and disallowance under Part 2 of Chapter 3 of the Legislation Act, and will cease as if repealed on the day after the last of its provisions commence.

### **Regulatory impact analysis**

Before the Regulations were made, their expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). That assessment indicated that they will have no or low impact on business, individuals and the economy. This assessment has been confirmed by the OBPR who granted an exemption from Regulatory impact analysis requirements (OBPR reference 23691).

### **Statement of compatibility with human rights obligations**

Before the Regulations were made, their impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. The Regulations will make minor and technical amendments to the four regulations listed above. The amendments will have no impact on the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. These Regulations are compatible with human rights as they do not raise any human rights issues.

### **Consultation before making**

Before the Regulations were made, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. The Attorney-General was satisfied that consultation was appropriate and reasonably practicable to be undertaken. The Regulations amend regulations that are administered by other Ministers. Each of the relevant Ministers approved the amendments to the regulations in their respective portfolios. The following agencies were consulted and support the amendments: the Department of Health, the Department of the Environment and Energy, and the Department of Agriculture and Water Resources.

### **OTHER ISSUES**

#### **Matter incorporated by reference**

The Regulations do not apply, adopt or incorporate other matters by reference.

#### **More information**

An explanation of the provisions and the Schedules to the Regulations is provided in [Attachment A](#).

## **NOTES ON PROVISIONS AND SCHEDULES**

### **Section 1 Name**

This section provides that the title of the Regulations is the *Regulatory Powers Legislation Amendment (Standardisation Reform) Regulations 2018* (the Regulations).

### **Section 2 Commencement**

**Item 1** of the table provides that sections 1 to 4 and anything else in the instrument not covered by the table commence the day after the Regulations are registered on the Federal Register of Legislation.

**Item 2** of the table provides for Schedule 1 to the Regulations to commence the later of the commencement of Schedule 2 to the *Regulatory Powers (Standardisation Reform) Act 2017* (the Reform Act) or the start of the day after the Regulations are registered on the Federal Register of Legislation.

**Item 3** of the table provides for Schedule 2 to the Regulations to commence the later of the commencement of Schedule 3 to the Reform Act or the start of the day after the Regulations are registered on the Federal Register of Legislation.

**Item 4** of the table provides for Schedule 3 to commence on the day after the Regulations are registered on the Federal Register of Legislation.

**Item 5** of the table provides for Schedule 4 to commence the later of the commencement of Schedule 10 to the Reform Act or the start of the day after the Regulations are registered on the Federal Register of Legislation.

### **Section 3 Authority**

This section provides that the Regulations are made under the following Acts:

- (a) the *Australian Sports Anti-Doping Authority Act 2006*;
- (b) the *Building Energy Efficiency Disclosure Act 2010*;
- (c) the *Illegal Logging Prohibition Act 2012*;
- (d) the *Industrial Chemicals (Notification and Assessment) Act 1989*.

### **Section 4 Schedules**

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulations has effect according to its terms.

#### **Schedule 1 Amendment of the Australian Sports Anti-Doping Authority Regulations 2006**

Schedule 1 to the Regulations amends the *Australian Sports Anti-Doping Authority Regulations 2006* (the ASADA Regulations). The amendments are consequential to the commencement of Schedule 2 to the Reform Act. Upon commencement, Schedule 2 to the

Reform Act will apply the standard provisions of the Regulatory Powers Act to the *Australian Sports Anti-Doping Authority Act 2006* (the ASADA Act). The commencement date for Schedule 2 to the Reform Act is 6 November 2018 or an earlier day fixed by Proclamation.

**Item 1** amends regulation 1A of the ASADA Regulations to repeal the definition of an authorised person. This definition is no longer required following the repeal of Part 5 of the ASADA Regulations.

**Item 2** repeals Part 5 of the ASADA Regulations, which provides for the use of infringement notices in relation to contraventions of civil penalty provisions in the ASADA Act. This Part will no longer be required following commencement of Schedule 2 to the Reform Act. Schedule 2 to the Reform Act will apply Part 5 of the Regulatory Powers Act, which provides a framework for the use of infringement notices, to the ASADA Act.

**Item 3** inserts a transitional provision into Part 6 of the ASADA Regulations. This item provides that the definition of authorised person in regulation 1A, and Part 5, of the ASADA Regulations, which are repealed by the Regulations, continue to apply on and after commencement in relation to alleged contraventions of civil penalty provisions of the ASADA Act occurring before the commencement of Schedule 2 to the Reform Act.

### **Schedule 2 Amendment of the Building Energy Efficiency Disclosure Regulations 2010**

Schedule 2 to the Regulations amends the *Building Energy Efficiency Disclosure Regulations 2010* (the BEED Regulations). The amendments are consequential to the commencement of Schedule 3 to the Reform Act. Upon commencement, Schedule 3 to the Reform Act will apply the standard provisions of the Regulatory Powers Act to the *Building Energy Efficiency Disclosure Act 2010* (the BEED Act). The commencement date for Schedule 3 to the Reform Act is 6 November 2018 or an earlier date fixed by Proclamation.

**Item 1** repeals Part 7 of the BEED Regulations, which relates to the form of and procedures relating to infringement notices under the BEED Act. This Part is no longer required following commencement of Schedule 3 to the Reform Act. Schedule 3 to the Reform Act will apply Parts 4 and 5 of the Regulatory Powers Act, which provide frameworks for the use of infringement notices and civil penalty provisions, respectively, to the BEED Act.

**Item 2** inserts a transitional provision into Part 8 of the BEED Regulations. This item provides that Part 7 of the BEED Regulations, which are repealed by the Regulations, continues to apply on and after commencement in relation to alleged contraventions of civil penalty provisions of the BEED Act occurring before the commencement of Schedule 3 to the Reform Act.

### **Schedule 3 Amendment of the Illegal Logging Prohibition Regulation 2012**

Schedule 3 to the Regulations amends the *Illegal Logging Prohibition Regulation 2012* (the Illegal Logging Regulation). The amendment is consequential to Schedule 9 to the Reform Act, which commenced on 1 January 2018. Schedule 9 to the Reform Act applied Parts 2, 3, 4 and 5 of the Regulatory Powers Act to the *Illegal Logging Prohibition Act 2012* (the Illegal Logging Act). These Parts provide frameworks for the use of monitoring and investigation powers, civil penalties and infringement notices, respectively.

**Item 1** repeals Part 4 of the Illegal Logging Regulation. Part 4 contains a single section, section 26, which prescribes the form of identity cards for the purpose of paragraph 20(2)(a) of the Illegal Logging Act. Schedule 9 to the Reform Act repealed section 20 of the Illegal Logging Act. Therefore, upon commencement of Schedule 9 to the Reform Act, Part 4 of the Illegal Logging Regulation ceased to have effect and is redundant.

#### **Schedule 4 Amendment of the Industrial Chemicals (Notification and Assessment) Regulations 1990**

Schedule 4 of the Regulations amends the *Industrial Chemicals (Notification and Assessment) Regulations 1990* (the NICNAS Regulations). The amendments are consequential to Schedule 10 to the Reform Act. Upon commencement, Schedule 10 to the Reform Act will apply the standard provisions of the Regulatory Powers Act, relating to monitoring powers, investigation powers and injunctions, to the *Industrial Chemicals (Notification and Assessment) Act 1989* (the NICNAS Act). The commencement date for Schedule 10 to the Reform Act is 6 November 2018 or an earlier date fixed by Proclamation.

**Item 1** repeals regulation 11A of the NICNAS Regulations, which provides that for the purposes of subsection 87(2) of the NICNAS Act, the form of search warrant in Schedule 1A to the NICNAS Regulations is prescribed. Schedule 10 to the Reform Act will repeal sections 85 to 88 of the NICNAS Act, which relate to monitoring and investigation powers. Upon repeal of section 87 of the NICNAS Act, regulation 11A will cease to have effect and will be redundant.

**Item 2** provides that Schedule 5 to the NICNAS Regulations, which is inserted by Item 4 of this Schedule, has effect. Schedule 5 provides for transitional provisions in relation to the provisions of the NICNAS Regulations repealed by this Schedule, as detailed in relation to Item 4 below.

**Item 3** repeals Schedule 1A of the NICNAS Regulations, which provides the form prescribed by regulation 11A of the NICNAS Regulations. Regulation 11A is repealed by Item 1 of this Schedule, as detailed above. As outlined in relation to Item 1 above, upon commencement of Schedule 10 to the Reform Act, Schedule 1A of the NICNAS Regulations will become redundant.

**Item 4** inserts new Schedule 5 into the NICNAS Regulations, which contains a single item. Item 1 of Schedule 5 is a transitional provision. This provision provides that regulation 11A and Schedule 1A of the NICNAS Regulations continue to apply on and after the commencement of Schedule 4 of the Regulations, in relation to a warrant issued under section 87 of the NICNAS Act on or after the commencement of Schedule 10 to the Reform Act, as a result of an application made before the commencement of Schedule 10 to the Reform Act. This ensures that any warrants resulting from an application made under section 87 of the NICNAS Act, prior to its repeal by the Reform Act, are to use the form prescribed in Schedule 1A of the NICNAS Regulations.