



The Regulatory Powers Act – fact sheet

Introduction to regulatory powers

Regulatory powers are the powers used by government agencies to ensure individuals and industry comply with legislative requirements, and to respond to instances of non-compliance. In the context of the [Regulatory Powers \(Standard Provisions\) Act 2014](#) (the Regulatory Powers Act), these powers are divided into two categories—coercive and enforcement powers.

Coercive powers, in the form of monitoring and investigation powers, may be used to ‘check’ compliance with a civil penalty or offence provision. An authorised person exercising monitoring or investigation powers is using those powers to evaluate the conduct of a person, and gather requisite information and evidence in the case of a contravention. Enforcement powers are typically used **after** coercive powers are used, and may include the issuing of infringement notices, applying for civil penalty orders or injunctions, or entering into enforceable undertakings.

The Regulatory Powers Act

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 standard provisions of the Regulatory Powers Act are an accepted baseline of powers required for an effective monitoring, investigation or enforcement regulatory regime, providing adequate safeguards and protecting important common law privileges.

New or amending Acts that require monitoring, investigation or enforcement powers of the kind available under the Regulatory Powers Act should be drafted to trigger the relevant provisions of that Act, unless there are compelling policy reasons to the contrary.

Further information about triggering the Regulatory Powers Act can be found in the *Triggering the Regulatory Powers Act – fact sheet*.

Background to the Regulatory Powers Act

In 2011, the Office of Parliamentary Counsel (OPC) raised concerns that the inclusion of suites of regulatory powers in each Bill containing offences or civil penalty provisions was resulting in growing divergence between those provisions, producing ever more complex and intricate variations.

A proposed solution to this issue was to increase the use of common provisions across the Commonwealth statute book. AGD agreed to work with OPC and relevant agencies to create a new Act of general application, the Regulatory Powers Act, to reduce the volume and increase the consistency and coherence of Commonwealth laws. This response is part of the [‘Clearer Commonwealth Laws’](#) initiative.

OPC analysed existing regulatory provisions across a wide range of schemes already on the Commonwealth Statute book. It became clear that there was a set of core regulatory provisions that could be standardised for inclusion in an Act of general application. As a result, the Regulatory Powers Act was drafted, to provide a set of standard provisions that could be applied across multiple regulatory regimes.

The Regulatory Powers Act was also drafted to be consistent with the [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#) (the Guide to Framing Commonwealth Offences).

Benefits of applying the Regulatory Powers Act

The Regulatory Powers Act not only reduces the volume of provisions dealing with monitoring, investigation and enforcement on the Commonwealth statute book, but also ensures greater consistency between different regulatory regimes and reduces the administrative burden on agencies in exercising different regulatory powers.

Standard regulatory powers across the Commonwealth:

- significantly reduces the length of legislation governing each regulatory regime
- provides greater clarity and consistency for agencies that exercise powers under multiple regimes
- facilitates the development of a common body of law
- makes it easier for businesses that are subject to multiple regimes to understand and comply with the law, and
- makes it easier for individuals and businesses to know their rights and responsibilities, and more readily comply with the law.

Implementation of the Regulatory Powers Act supports the government’s regulatory reform agenda, as it simplifies and streamlines Commonwealth regulatory powers across the statute book.

Revisiting human rights implications

When the Parliamentary Joint Committee on Human Rights considered the Regulatory Powers (Standard Provisions) Bill 2014, it noted that it is necessary to consider the human rights impact in the specific context of each legislative regime that triggers the Regulatory Powers Act. As such, in preparing Bills and legislative instruments that trigger the Regulatory Powers Act, departments and agencies are required to prepare a Statement of Compatibility with Human Rights to explain and to justify why particular regulatory powers are appropriate in their specific regulatory context.

Contact details

The Administrative Law Section of AGD should be consulted on any proposals that seek to establish or amend frameworks that provide for regulatory powers, by emailing AdminLaw@ag.gov.au.