



Triggering the Regulatory Powers Act – fact sheet

Triggering the Regulatory Powers Act

When provisions of the [Regulatory Powers \(Standard Provisions\) Act 2014](#) (the Regulatory Powers Act) are applied to another Act, this is known as 'triggering'. This means that the actual regulatory powers provisions are contained within the Regulatory Powers Act, and the 'triggering' Act merely references the Regulatory Powers Act and expressly identifies which provisions of the triggering Act the Regulatory Powers Act will enforce. An example of an Act that has triggered the Regulatory Powers Act is the [Biosecurity Act 2015](#), which triggered Parts 2 to 7 of the Regulatory Powers Act.

The Regulatory Powers Act is an Act of general application, and there is no express requirement to trigger its provisions. However, the standard provisions of the Regulatory Powers Act represent best practice in relation to regulatory powers, providing a standard baseline of regulatory powers for civil regulatory regimes while 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.

Exemptions from triggering the Regulatory Powers Act

There are no automatic exemptions from the Regulatory Powers Act. However, there may be a strong reason that would suggest that an Act is not suitable to trigger the Regulatory Powers Act. If an agency considers that a strong policy justification exists for not triggering the Regulatory Powers Act, that agency should discuss that rationale with the Administrative Law Section.

It is not necessary to trigger all of the Regulatory Powers Act. An Act can trigger one or several or all of the Parts of the Regulatory Powers Act. For example, an Act that only has an infringement notices scheme for criminal penalties could trigger Part 5 of the Regulatory Powers Act to provide for that scheme.

Modifications to the standard provisions of the Regulatory Powers Act

There is scope to modify the operation of the Regulatory Powers Act to suit a particular regime, such as to exclude the application of particular provisions or to provide for additional powers. However, this is only appropriate where it is necessary in the circumstances of the particular regulatory regime and where there are strong policy justifications. It is the responsibility of the relevant agency to justify why proposed modifications are appropriate in their specific regulatory context.

Use of related provisions

The Regulatory Powers Act provides that a triggering Act may identify related provisions in Acts *other* than the triggering Act. This means that in the course of exercising monitoring or investigation powers, if an authorised person finds a thing that could be evidence of contravention of a related provision, the authorised person may secure the thing, if exercising monitoring powers, or seize the thing, if exercising investigation powers.

A person or body may be subject to several regulatory Acts that are administered by the same regulatory agency. The use of related provisions reduces administrative burden and ensures that a regulator can efficiently monitor compliance, by preventing the loss, concealment or destruction of a thing that would demonstrate that another provision has been, is being or will be contravened.

Regulatory powers and delegated legislation

The standard provisions of the Regulatory Powers Act cannot be triggered by legislative instruments. Where regulatory powers are proposed, principal Acts should be drafted or amended to trigger the standard provisions of the Regulatory Powers Act.

If existing regulatory powers are provided by legislative instrument, consideration should be given to amending the principal Act that the legislative instrument is made under to trigger the Regulatory Powers Act. The existing provisions in the legislative instrument would be repealed following migration of the regime to the principal Act. This is consistent with the overall objective of the Regulatory Powers Act, which is to streamline regulatory powers across the Commonwealth statute book by ensuring greater consistency between different regulatory regimes.

Application to civil and criminal context

In the context of the Regulatory Powers Act, regulatory powers can apply in a civil and/or criminal context. That is, monitoring or investigation powers can be used to ensure compliance with a provision that is subject to a criminal penalty, as well as a provision that is subject to a civil penalty. Enforcement mechanisms may also be used for both civil and criminal provisions. The only exception to this broad application is in relation to the use of civil penalty orders. A civil penalty order may only be used as an enforcement mechanism for a civil penalty provision.

Application to international context

The fact that a scheme has an international element does not automatically mean that an Act is unsuitable to trigger the Regulatory Powers Act. Acts with an international nature require close inspection to ensure there would not be adverse operational consequences, and that powers may be exercised effectively, but it does not preclude such an Act from triggering the provisions of the Regulatory Powers Act.

If an agency is considering applying the Regulatory Powers Act extraterritorially it should contact the Administrative Law Section at an early stage. It may also be appropriate to obtain legal advice.

Contact details

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