

REGULATORY POWERS (STANDARD PROVISIONS) REGULATIONS 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Regulatory Powers (Standard Provisions) Act 2014* (the Act) provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as enforcement provisions. Section 126 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act. Paragraphs 35(2)(a) and 76(2)(a) of the Act provide that identity cards used by authorised persons under the Act must satisfy the requirements prescribed by the regulations.

The Act requires authorised persons to be issued with and carry an identity card when exercising monitoring and investigation powers under the Act. The Regulations prescribe a minimum form for such identity cards to ensure authorised persons are able to verify their authority and are easily identifiable when exercising significant coercive powers under the Act. The Regulations also provide that the Minister may, in writing, authorise identity cards issued by a particular relevant chief executive not to comply with certain requirements, if satisfied it is appropriate to do so.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence on the day after registration.

CONSULTATION

The Regulations replace the *Regulatory Powers (Standard Provisions) Regulation 2015*, which sunset on 1 October 2025. The Attorney-General's Department (the department) consulted Commonwealth agencies with regulatory functions which utilise the identity cards under the Regulation, to determine whether the 2015 instrument needed to be replaced ahead of sunset. The department consulted the Department of Agriculture, Fisheries and Forestry; the Department of Finance; the Office of the National Data Commissioner; the Department of Industry, Science and Resources; the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts; the National Measurement Institute; and the National Offshore Petroleum Titles Administrator. The department also consulted the Department of the Prime Minister and Cabinet, which administers the Australian Government Branding Guidelines. Agencies supported the Regulation being remade in substantially the same form, as it fulfils ongoing requirements under the Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Regulatory Powers (Standard Provisions) Regulations 2025

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Regulatory Powers (Standard Provisions) Act 2014* (the Act) provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as enforcement provisions. Section 126 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act. Paragraphs 35(2)(a) and 76(2)(a) of the Act provide that identity cards used by authorised persons under the Act must satisfy the requirements prescribed by the regulations.

The Act requires authorised persons to be issued with and carry an identity card when exercising monitoring and investigation powers under the Act. The *Regulatory Powers (Standard Provisions) Regulations 2025* (the Regulations) prescribe a minimum form for such identity cards to ensure authorised persons are able to verify their authority and are easily identifiable when exercising significant coercive powers under the Act. The Regulations also provide that the Minister may, in writing, authorise identity cards issued by a particular relevant chief executive not to comply with certain requirements, if satisfied it is appropriate to do so.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

NOTES ON SECTIONS

Part 1

Section 1 – Name

This section provides that the title of the instrument is the *Regulatory Powers (Standard Provisions) Regulations 2025*.

Section 2 – Commencement

This section provides for the commencement of each provision under the proposed Regulations.

Table item 1 provides that the whole of the proposed Regulations commences the day after registration.

Section 3 – Authority

This section provides that the instrument is made under the *Regulatory Powers (Standard Provisions) Act 2014*.

Section 4 – Schedules

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

Section 5 – Definitions

This section provides for definitions to be used for the purpose of the instrument. The section provides that:

‘*Act*’ means the *Regulatory Powers (Standard Provisions) Act 2014*.

‘*relevant authorising provisions*’, for an authorised person, means the provision of an Act that provides that the person is an authorised person for the purposes of Part 2 or 3 of the *Regulatory Powers (Standard Provisions) Act 2014*.

‘*tamper-evident security feature*’ means a feature intended to reduce the risk of counterfeiting or tampering, or to provide visual evidence of attempted tampering.

Part 2 – Identity Cards

Section 6 – Purpose of this Part

This section outlines the purpose of Part 2 of the Regulations. The purpose of the Part is to prescribe the requirements that an identity card must satisfy for the purposes of paragraphs 35(2)(a) and 76(2)(a) of the Act.

Subsections 35(1) and 76(1) of the Act provide that the relevant chief executive must issue an identity card to an authorised person for use by the authorised person while exercising monitoring and investigation powers under parts 2 and 3 of the Act. Paragraphs 35(2)(a) and 76(2)(a) of the Act provide that an identity card must satisfy the requirements prescribed by the regulations.

Section 7 – Requirements for identity cards

This section provides the specific requirements for identity cards.

Subsection 7(1) provides a list of elements that must be contained on the front of the identity card, subject to an authorisation under section 8 of the Regulations. These elements are:

- a) the Australian Government logo
- b) the photograph of the authorised person required by paragraph 35(2)(b) or 76(2)(b) of the Act (as the case may be)
- c) the full name of the authorised person
- d) a feature or statement that identifies the body in relation to which the person is an authorised person
- e) the date the card expires; and
- f) a statement that the person to whom the card is issued is an authorised person under the relevant authorising provision for the authorised person.

The note clarifies that under section 8 of the Regulations, the Minister may authorise non-compliance with either or both of paragraphs (a) and (d) of subsection 7(1).

Subsection 7(2) provides that the Commonwealth Coat of Arms in the Australian Government logo required by paragraph 1(a) of subsection 7(1) must be the conventional version no. 3A and be large enough to be recognisable as the Commonwealth Coat of Arms. These requirements are consistent with the requirements contained in the Australian Government Branding Guidelines administered by the Department of the Prime Minister and Cabinet.

Subsection 7(3) provides that the photograph referred to in paragraph 1(b) must meet the following requirements:

- a) show the authorised person's full face, and the authorised person's head and shoulders
- b) have a resolution of at least 300 dpi
- c) have an aspect ratio (being width divided by height) of 0.75
- d) for a portrait view identity card—have dimensions of at least 33 mm by 44 mm, including any border; and
- e) for a landscape view identity card—have dimensions:
 - i. of at least 33 mm by 44 mm, including any border; but
 - ii. not exceeding 37.5 mm by 50 mm, including any border.

These requirements ensure that persons undertaking regulatory activities can be readily identified as an authorised person through examination of their identity card.

Subsection 7(4) provides that the back of the identity card must contain a serial number and an address for the card to be returned to if it is found. The inclusion of a serial number enables regulatory agencies to track the number of cards issued, and to which authorised officers they were issued. The inclusion of an address for the card to be returned to ensures that identity cards can be recovered if lost or misplaced.

Subsection 7(5) provides that the identity card must contain at least one tamper-evident security feature. This is intended to reduce the risk of counterfeiting or tampering, or to provide visual evidence of tampering. Examples of tamper-evident security features include optical varying structures, optical varying inks, laser etching and engraving, holograms, holographic images and watermarks.

Subsection 7(6) provides that the identity card may contain other information or features. This provides regulatory agencies with flexibility to add additional detail to identity cards, noting the Regulations provide for the minimum form specifications for identity cards and is not intended to be an exhaustive list of requirements. Agencies are still required to comply with applicable government policies and guidelines when incorporating other information or features in their cards.

Section 8 – Authorisation by Minister not to comply with certain requirements

Subsection 8(1) provides that the Minister may, in writing, authorise identity cards issued by a particular relevant chief executive not to comply with either or both of paragraphs 7(1)(a) and (d). Subsection 8(2) provides that the Minister must not give the authorisation unless the Minister is satisfied that it is appropriate to do so in all the circumstances.

The note specifies that paragraphs 7(1)(a) and (d) require the front of an identity card to contain the Australian Government logo, and a feature or statement identifying the body in relation to which a person is an authorised person, respectively.

This enables an authorisation to be made in circumstances in which the display of the Australian Government logo on an identity card may be inappropriate (for example, because of safety concerns, or because of a need to clarify the independent nature of a statutory agency). There may also be some circumstances in which the display of a feature or statement that identifies the body in relation to which the person is an authorised person may be inappropriate due to the nature of the body (for example, because of safety concerns). Subsection 8(1) allows identity cards to not contain these requirements in specific circumstances, where the Minister has given authorisation for the exclusion.

Where a regulatory agency seeks to omit the Australian Government logo from its branding on identity cards, an exemption from the Australian Government Branding Guidelines must be obtained from the Minister responsible for branding policy, via the Department of the Prime Minister and Cabinet (PM&C). This exemption needs to be granted in order to obtain an authorisation from the Minister. Despite an exemption being granted by PM&C, it is appropriate that corresponding approval be obtained from the Minister administering the Regulatory Powers Act, noting the Minister's responsibility for maintaining standards under the regulatory powers framework, and interest in having oversight over departures from such standards.

Part 3 – Transitional provisions

Section 9 – Continuation of authorisations

Section 9 provides that an authorisation in force under section 6 of the *Regulatory Powers (Standard Provisions) Regulation 2015* (the ***repealed instrument***) immediately before the commencement of this instrument continues in force on and after that commencement as if it were an authorisation given under this instrument.

This provides for the continuation of existing authorisations, thereby ensuring that any issued identity cards to which authorisations apply remain valid and do not require re-authorisation.

Schedule 1 – Repeals

Schedule 1 provides for the repeal of the *Regulatory Powers (Standard Provisions) Regulation 2015*. This ensures that the *Regulatory Powers (Standard Provisions) Regulation 2015* ceases operation concurrently with the commencement of the replacement instrument.