Fuel Quality Standards Act 2000

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About this compilation

This compilation

This is a compilation of the *Fuel Quality Standards Act 2000* that shows the text of the law as amended and in force on 30 June 2021 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to regulate activities involving fuel and fuel additives, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Fuel Quality Standards Act 2000*.

2 Commencement

This Act commences on a day or days to be fixed by Proclamation.

3 Objects of Act

The objects of this Act are to:

(a) regulate the quality of fuel supplied in Australia in order to:

(i) reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems; and

(ii) facilitate the adoption of better engine technology and emission control technology; and

(iii) allow the more effective operation of engines; and

(b) ensure that, where appropriate, information about fuel is provided when the fuel is supplied.

4 Definitions

(1) In this Act, unless the contrary intention appears:

approval means an approval under section 13.

Australia, when used in a geographical sense, includes the external Territories (other than Norfolk Island).

business premises means premises that:

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(a) are used for, or in connection with, the supply of fuel or a fuel additive; and
(b) are open to the public on a regular basis.

civil penalty provision means a subsection, or a section that is not divided into subsections, that has set out at its foot the words "civil penalty" and one or more amounts in penalty units.

Commonwealth entity means any of the following:
(a) the Commonwealth;
(b) a body corporate established for a public purpose by or under an Act;
(c) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
(i) the Commonwealth;
(ii) a body covered by paragraph (b).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional trade or commerce means trade or commerce:
(a) among the States; or
(b) between a State and a Territory; or
(c) between 2 Territories.

court means any court.

Court means:
(a) the Federal Court of Australia; or
(b) the Supreme Court of a State or Territory.

emergency approval means an approval referred to in subsection 13(2).

emergency law means:
(a) the *Liquid Fuel Emergency Act 1984*; or
(b) a law specified in an instrument made under subsection (2).

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enforcement warrant means:

(a) a warrant issued under section 60; or

(b) a warrant signed by a magistrate under section 61.

evidential material means:

(a) in relation to an offence against this Act:

(i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or

(ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or

(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing the offence; and

(b) in relation to a contravention of a civil penalty provision:

(i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or

(ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or

(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening the civil penalty provision.

fuel has the meaning given by the regulations.

fuel additive has the meaning given by the regulations.

fuel quality information standard means a standard under section 22A.

fuel standard means a standard under section 21.

Note: See also section 5.

Fuel Standards Consultative Committee means the committee established by section 24.

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infringement notice means an infringement notice given under section 65L.

inspector means a person appointed as an inspector under section 38.

monitoring warrant means a warrant issued under section 59.

offence against this Act includes an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

Note: See also section 11.6 of the *Criminal Code*.

premises means:

(a) an area of land or any other place (whether or not it is enclosed or built on); or

(b) a building or other structure; or

(c) a vehicle, vessel or aircraft; or

(d) a part of any such premises.

Register means the Register of Prohibited Fuel Additives kept under section 32.

regulated person has the meaning given by subsection 13(1).

Secretary means the Secretary of the Department.

supply means supply (including re-supply) by way of sale, exchange or gift.

thing includes a substance, and a thing in electronic or magnetic form.

warrant means a monitoring warrant or an enforcement warrant.

(2) The Minister may, by legislative instrument, specify a law of the Commonwealth, a State or a Territory for the purposes of the definition of ***emergency law*** in subsection (1).

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5 Applicable fuel standard for fuel supplies

A reference in this Act to a fuel standard, in relation to a supply of fuel, is a reference to the standard as it applies in relation to the area in which the supply occurs.

Note: A fuel standard may apply more stringently in respect of supplies of the fuel in particular areas in Australia: see subsection 21(2).

6 Act binds the Crown

(1) This Act binds the Crown in each of its capacities.

(2) However, nothing in this Act makes the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

7 External Territories

This Act extends to every external Territory other than Norfolk Island.

8 Relationship to other Commonwealth laws

The provisions of this Act are in addition to, and not in substitution for, the requirements of any other law of the Commonwealth.

9 Relationship to State and Territory laws

(1) Subject to this section, it is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

(2) It is the intention of the Parliament that, to the extent prescribed by the regulations, this Act is to apply to the exclusion of a law of a State or Territory relating to:

(a) the supply of fuel that is the subject of a fuel standard; or

(b) a supply of fuel that is subject to a fuel quality information standard.

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Part 2—Regulation of fuel and fuel additives

Division 1—Overview

11 Overview of Part

This Part sets out a regulatory regime in relation to activities involving fuel and fuel additives.

Division 2 creates offences and civil penalty provisions relating to supplying fuel that does not comply with fuel standards and to supplies of fuel that do not comply with fuel quality information standards.

Division 3 deals with the granting of approvals (including emergency approvals) to vary a fuel standard or a fuel quality information standard. It also deals with varying and revoking those approvals.

Division 4 deals with fuel documentation that is required for certain supplies of fuel in Australia.

Division 5 creates an offence and a civil penalty provision relating to the alteration of fuel.

Division 6 deals with the making and varying of fuel standards and fuel quality information standards and the consultation required beforehand. In some cases, notification, rather than consultation, is required.

Division 7 creates offences and civil penalty provisions relating to the supply or importation of a fuel additive that is covered by an entry in the Register of Prohibited Fuel Additives.

Division 8 deals with keeping the Register and the process to be followed before entries are made in it.

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Division 2—Supply of fuel

12 Offence—supplying fuel that does not comply with fuel standards

(1) A person commits an offence if:

(a) the person supplies fuel in Australia that is the subject of a fuel standard; and

(aa) in the case where the fuel standard specifies the circumstances in which the standard applies—the person supplies the fuel in Australia in those circumstances; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce; and

(c) the fuel does not comply with the standard; and

(e) either:

(i) if the person holds an approval that varies the standard in respect of the supply—the fuel does not comply with the standard as varied; or

(ii) if another person holds an approval that varies the standard in respect of the supply by the person—the fuel does not comply with the standard as varied; and

(f) the supply is not in order to comply with a direction or order under an emergency law.

Penalty: 500 penalty units.

(2) However, the person does not commit the offence if the person believes on reasonable grounds that the fuel that is supplied will be further processed for the purpose of bringing the fuel into compliance with the standard or the standard as varied.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

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12AA Civil penalty—supplying fuel that does not comply with fuel standards

(1) A person contravenes this subsection if:

(a) the person supplies fuel in Australia that is the subject of a fuel standard; and

(b) in the case where the fuel standard specifies the circumstances in which the standard applies—the person supplies the fuel in Australia in those circumstances; and

(c) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce; and

(d) the fuel does not comply with the standard; and

(e) either:

(i) if the person holds an approval that varies the standard in respect of the supply—the fuel does not comply with the standard as varied; or

(ii) if another person holds an approval that varies the standard in respect of the supply by the person—the fuel does not comply with the standard as varied; and

(f) the supply is not in order to comply with a direction or order under an emergency law.

Civil penalty:

(a) for an individual—500 penalty units; and

(b) for a body corporate—2,500 penalty units.

(2) However, the person does not contravene subsection (1) if the person believes on reasonable grounds that the fuel that is supplied will be further processed for the purpose of bringing the fuel into compliance with the standard or the standard as varied.

12A Offence—supplying fuel that does not comply with fuel quality information standards

(1) A person commits an offence if:

(a) the person supplies fuel in Australia; and

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(b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce; and

(c) the supply is subject to a fuel quality information standard; and

(d) the supply does not comply with the fuel quality information standard; and

(e) either:

(i) if the person holds an approval that varies the fuel quality information standard in respect of the supply—the supply does not comply with the fuel quality information standard as varied; or

(ii) if another person holds an approval that varies the fuel quality information standard in respect of the supply by the person—the supply does not comply with the fuel quality information standard as varied; and

(f) the supply is not in order to comply with a direction or order under an emergency law.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

12B Civil penalty—supplying fuel that does not comply with fuel quality information standards

A person contravenes this section if:

(a) the person supplies fuel in Australia; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce; and

(c) the supply is subject to a fuel quality information standard; and

(d) the supply does not comply with the fuel quality information standard; and

(e) either:

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(i) if the person holds an approval that varies the fuel quality information standard in respect of the supply—the supply does not comply with the fuel quality information standard as varied; or

(ii) if another person holds an approval that varies the fuel quality information standard in respect of the supply by the person—the supply does not comply with the fuel quality information standard as varied; and

(f) the supply is not in order to comply with a direction or order under an emergency law.

Civil penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—300 penalty units.

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Division 3—Approvals

Subdivision A—Grant of approval

13 Grant of approval

(1) The Minister may grant to any person an approval in writing that varies a fuel standard or a fuel quality information standard in a specified way in respect of specified supplies of the fuel by:

(a) that person; or

(b) any other specified person (a ***regulated person***).

(2) Subject to subsection (3), the Minister may grant a type of approval under subsection (1), known as an ***emergency approval***, if the Minister is satisfied that:

(a) a shortfall in the supply of a fuel will exist within two weeks; and

(b) the shortfall will have a serious impact on:

(i) the interests of consumers; or

(ii) economic or regional development; and

(c) the shortfall will not reasonably be met by one or more persons (other than the applicant for the approval), either separately or together; and

(d) granting the approval will enable, or assist in enabling, the shortfall to be met or mitigated; and

(e) the shortfall will exist because of exceptional circumstances.

Note: Before granting an emergency approval, the Minister must notify, rather than consult, the Fuel Standards Consultative Committee: see subsections 24A(1) and 24C(1).

(3) The Minister must not grant an emergency approval in respect of a particular shortfall in the supply of a fuel if the Minister has previously granted an emergency approval in respect of that shortfall.

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(4) If an application for an approval is made and the Minister does not grant an approval, the Minister must refuse to grant the approval.

(5) If:

(a) an application for an approval (other than an emergency approval) is made; and

(b) within 21 days of receiving any recommendations of the Fuel Standards Consultative Committee arising out of the consultation required by section 24A, the Minister neither grants, nor refuses to grant, the approval;

the Minister is taken to have refused to grant the approval.

(6) An approval granted under subsection (1) is not a legislative instrument.

13A Period of effect of approval

(1) An approval comes into force on the day specified in the approval.

(2) An approval (other than an emergency approval) remains in force for the period specified in the approval, unless earlier revoked.

(3) Subject to subsection (4), an emergency approval remains in force for the shorter of the following periods, unless earlier revoked:

(a) the period specified in the approval;

(b) 14 days.

(4) If an emergency approval is varied under section 17F, at the end of the period for which the approval remained in force (whether because of subsection (3) or this subsection) the approval continues in force for the shorter of the following periods, unless earlier revoked:

(a) the period specified in the approval;

(b) 14 days.

14 Application for approval

(1) An application for an approval must be made in accordance with the regulations.

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(2) The application must be accompanied by the application fee (if any) prescribed by the regulations.

(3) If the Minister is required by paragraph 24A(1)(a) to consult the Fuel Standards Consultative Committee before granting an approval, the Secretary must, within 90 days of an application for such an approval being made, give to the Committee:

(a) a copy of:

(i) the application; and

(ii) any document accompanying it; and

(b) any other material or information that the Secretary considers relevant (including material or information that has become available since the application was made).

15 Criteria for granting approval

(1) The Minister must have regard to the following when deciding whether or not to grant an approval:

(a) the protection of the environment;

(b) the protection of occupational and public health and safety;

(c) the interests of consumers;

(d) the impact on economic and regional development.

(2) The Minister may also have regard to any other matters he or she considers relevant.

16 Conditions of approval

(1) An approval is subject to the following conditions:

(a) the conditions set out in section 17;

(b) any conditions specified in the approval.

(2) A condition specified in the approval need not relate to the supply of the fuel. However, the Minister must be satisfied that the condition promotes the objects of this Act.

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17 Condition about informing people of obligations

(1) It is a condition of an approval that its holder, within the period prescribed by the regulations, inform any regulated person, to whom a particular condition of the approval applies, of the following:

(a) the particular condition, including any variation of it;

(b) any revocation of the approval.

(2) Requirements in relation to the manner in which information is provided under subsection (1) may be prescribed by the regulations.

(3) If such requirements are prescribed, it is a condition of the approval that its holder comply with the requirements.

17A Approvals and reasons for approvals to be made public

As soon as practicable after granting an approval under section 13, the Minister must cause to be published in the *Gazette* a notice containing the following information:

(a) the name of the person to whom the approval has been granted;

(b) the period of operation of the approval;

(c) details of the approved variation of the fuel standard or fuel quality information standard;

(d) reasons for granting the approval.

17B Notification of refusal to grant approval

If the Minister refuses, or is taken to refuse, to grant an approval, the Minister must, as soon as practicable, notify the person who applied for the approval, in writing, of the refusal.

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Subdivision B—Variation of approval

17C Variation of approval—general

(1) Except as provided by this Subdivision, an approval (other than an emergency approval) may be varied in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) An emergency approval may only be varied as provided by this Subdivision.

17D Variation of approval—Secretary's initiative

(1) The Minister may vary an approval on the Secretary's initiative.

(2) If the variation is of a minor nature:
  (a) the Minister may, in writing, vary the approval; and
  (b) the Minister must cause to be published in the *Gazette* a notice containing the following information:
    (i) the name of the person to whom the approval was granted;
    (ii) the nature of the variation;
    (iii) the period of operation of the approval;
    (iv) reasons for the variation.

(3) Any other variation of an approval on the Secretary's initiative (other than a variation covered by section 17F) must be made in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, except that an application for the variation is not required.

17E Variation of approval—adding regulated persons

(1) A person (the ***applicant***) may apply, in writing, for an approval to be varied so that one or more regulated persons are added to the approval.

(2) The Minister may, in writing, vary the approval accordingly.

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(3) As soon as practicable after varying an approval under this section, the Minister must cause to be published in the *Gazette* a notice containing the following information:
   (a) the name of the person or persons who have been added to the approval;
   (b) the period of operation of the approval;
   (c) reasons for the variation.

(4) If the Minister does not vary the approval, the Minister must, as soon as practicable, notify the applicant, in writing, of the refusal.

17F Variation of approval—extended period of effect of emergency approval

(1) The Minister may, in writing, vary the period of effect of an emergency approval if the Minister is satisfied that:
   (a) the shortfall in respect of which the approval was first issued will continue to exist after the end of that period; and
   (b) the shortfall will have, or is having, a serious impact on:
      (i) the interests of consumers; or
      (ii) economic or regional development; and
   (c) the shortfall will not reasonably be met by one or more persons (other than the holder of the approval), either separately or together; and
   (d) the variation will enable, or assist in enabling, the shortfall to be met or mitigated; and
   (e) the shortfall will continue to exist because of exceptional circumstances.

   Note: Before varying an emergency approval under this section, the Minister must consult the Fuel Standards Consultative Committee: see section 24B.

(2) The Minister may vary an emergency approval under subsection (1) either:
   (a) on the written application of the holder of the approval; or
   (b) on the initiative of the Secretary.

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(3) When deciding whether to vary an emergency approval under subsection (1), the Minister:

(a) must have regard to the matters set out in subsection 15(1); and

(b) may also have regard to any other matters he or she considers relevant.

(4) If the Minister varies an emergency approval under subsection (1), the Minister may also impose new conditions on the approval or vary or remove existing conditions.

(5) As soon as practicable after varying an emergency approval under subsection (1), the Minister must cause to be published in the *Gazette* a notice containing the following information:

(a) the period of operation of the approval;

(b) the condition or conditions (if any) imposed, varied or removed;

(c) reasons for the variation.

(6) If:

(a) the holder of an emergency approval makes an application under paragraph (2)(a) in relation to the approval; and

(b) the Minister does not vary the approval;

the Minister must, as soon as practicable, notify the holder, in writing, of the refusal.

Subdivision C—Revoking an approval

17G Revoking an approval

An approval may be revoked in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, except that an application for revocation of the approval is not required.

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Subdivision D—Contravening conditions of approval

18 Offences—contravening conditions of approval

Holder of approval

(1) The holder of an approval commits an offence if:

(a) the holder intentionally takes an action or omits to take an action; and

(b) the holder is a constitutional corporation or a Commonwealth entity or the action or omission occurs in the course of constitutional trade or commerce; and

(c) the action or omission contravenes a condition of the approval; and

(d) the holder knows that the action or omission contravenes the condition or is reckless as to whether or not the action or omission contravenes the condition.

Penalty: 100 penalty units.

Regulated person

(2) A regulated person commits an offence if:

(a) the person intentionally takes an action or omits to take an action; and

(b) the person is a constitutional corporation or a Commonwealth entity or the action or omission occurs in the course of constitutional trade or commerce; and

(c) the action or omission contravenes a condition of the approval concerned; and

(d) the person has knowledge of the condition; and

(e) the person knows that the action or omission contravenes the condition or is reckless as to whether or not the action or omission contravenes the condition.

Penalty: 100 penalty units.

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18A Civil penalties—contravening conditions of approval

Holder of approval

(1) The holder of an approval contravenes this subsection if:
  (a) the holder takes an action or omits to take an action; and
  (b) the holder is a constitutional corporation or a Commonwealth entity or the action or omission occurs in the course of constitutional trade or commerce; and
  (c) the action or omission contravenes a condition of the approval.

Civil penalty:
  (a) for an individual—100 penalty units; and
  (b) for a body corporate—500 penalty units.

Regulated person

(2) A regulated person contravenes this subsection if:
  (a) the person takes an action or omits to take an action; and
  (b) the person is a constitutional corporation or a Commonwealth entity or the action or omission occurs in the course of constitutional trade or commerce; and
  (c) the action or omission contravenes a condition of the approval concerned.

Civil penalty:
  (a) for an individual—100 penalty units; and
  (b) for a body corporate—500 penalty units.

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Division 4—Fuel documentation

19 Offence—supplying fuel without documentation

(1) If:

(a) a person (the ***supplier***) supplies fuel in Australia to another person and the fuel is the subject of a fuel standard; and

(aa) in the case where the fuel standard specifies the circumstances in which the standard applies—the supplier supplies the fuel in Australia in those circumstances; and

(b) the supplier is a constitutional corporation or a Commonwealth entity or the supplier supplies the fuel in the course of constitutional trade or commerce; and

(c) the other person is not the end-user of the fuel;

the supplier must, within the period prescribed by the regulations, provide the other person with a document or documents containing:

(d) a statement as to whether or not the fuel complies with the standard; and

(e) any other information relating to the fuel that is prescribed by the regulations.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

19A Civil penalty—supplying fuel without documentation

(1) This section applies if:

(a) a person (the ***supplier***) supplies fuel in Australia to another person and the fuel is the subject of a fuel standard; and

(b) in the case where the fuel standard specifies the circumstances in which the standard applies—the supplier supplies the fuel in Australia in those circumstances; and

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(c) the supplier is a constitutional corporation or a Commonwealth entity or the supplier supplies the fuel in the course of constitutional trade or commerce; and

(d) the other person is not the end-user of the fuel.

(2) The supplier contravenes this subsection if, within the period prescribed by the regulations, the supplier does not provide the other person with a document or documents containing:

(a) a statement as to whether or not the fuel complies with the standard; and

(b) any other information relating to the fuel that is prescribed by the regulations.

Civil penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—300 penalty units.

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Division 5—Alteration of fuel

20 Offence—altering fuel the subject of a fuel standard

(1) A person commits an offence if:

(a) the person alters in any way fuel in Australia that is the subject of a fuel standard; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person alters the fuel in the course of, or for any purpose that is incidental to, constitutional trade or commerce; and

(c) the person alters the fuel with the intention of using it in Australia; and

(ca) in the case where the fuel standard specifies the circumstances in which the standard applies—the person alters the fuel with the intention of using it in Australia in those circumstances; and

(d) the fuel as altered does not comply with the base standard (whether or not the fuel complied with that standard before the alteration); and

(e) another person (the ***supplier***) supplied the fuel to the person in Australia, and either:

(i) if the supplier held an approval varying the standard in respect of the supply—the fuel as altered does not comply with the standard as varied (whether or not the fuel complied with that standard as varied before the alteration); or

(ii) if another person held an approval varying the standard in respect of the supply by the supplier—the fuel as altered does not comply with the standard as varied (whether or not the fuel complied with that standard as varied before the alteration).

Note: See section 5 for the applicable standard in respect of that supply.

Penalty: 500 penalty units.

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(2) For the purposes of subsection (1), ***base standard*** means the standard determined under section 21, disregarding the application of subsection 21(2).

(3) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

20A Civil penalty—altering fuel the subject of a fuel standard

(1) A person contravenes this subsection if:

(a) the person alters in any way fuel in Australia that is the subject of a fuel standard; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person alters the fuel in the course of, or for any purpose that is incidental to, constitutional trade or commerce; and

(c) the person alters the fuel with the intention of using it in Australia; and

(d) in the case where the fuel standard specifies the circumstances in which the standard applies—the person alters the fuel with the intention of using it in Australia in those circumstances; and

(e) if the fuel standard applies only in specified circumstances—the fuel is intended to be used in those circumstances; and

(f) the fuel as altered does not comply with the base standard (whether or not the fuel complied with that standard before the alteration); and

(g) another person (the ***supplier***) supplied the fuel to the person in Australia, and either:

(i) if the supplier held an approval varying the standard in respect of the supply—the fuel as altered does not comply with the standard as varied (whether or not the fuel complied with that standard as varied before the alteration); or

(ii) if another person held an approval varying the standard in respect of the supply by the supplier—the fuel as altered does not comply with the standard as varied

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(whether or not the fuel complied with that standard as varied before the alteration).

Note: See section 5 for the applicable standard in respect of that supply.

Civil penalty:

(a) for an individual—500 penalty units; and

(b) for a body corporate—2,500 penalty units.

(2) For the purposes of subsection (1), ***base standard*** means the standard determined under section 21, disregarding the application of subsection 21(2).

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Division 6—Fuel standards and fuel quality information standards

21 Making fuel standards

Base standard

(1) The Minister may, by legislative instrument, determine a fuel standard in respect of a specified kind of fuel.

Standard may apply only in specified circumstances

(1A) The fuel standard may specify the circumstances in which the standard applies.

More stringent standard

(2) The fuel standard may provide for more stringent parameters to apply in respect of supplies of the fuel in specified areas in Australia.

Minister must not give preference

(3) In applying subsection (2), the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Regard to be had to objects of Act

(5) In making a determination under this section, the Minister must have regard to the objects of this Act.

22 Guidelines for more stringent fuel standards

The Minister must, by legislative instrument, develop guidelines that he or she must have regard to in applying subsection 21(2).

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22A Making fuel quality information standards

Minister may determine fuel quality information standards

(1) The Minister may, by legislative instrument, determine a fuel quality information standard for a specified supply of a specified kind of fuel.

Content of fuel quality information standards

(2) A fuel quality information standard must specify:
  (a) the information about the fuel that the Minister is satisfied should, in the public interest, be provided in connection with the supply; and
  (b) the way in which that information is to be provided.

Minister must not give preference

(3) In determining a fuel quality information standard, the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Regard to be had to objects of Act

(5) In making a determination under this section, the Minister must have regard to the objects of this Act.

24 Fuel Standards Consultative Committee

The Fuel Standards Consultative Committee is established.

24A Consultation—general

(1) Unless section 24B or 24C applies, the Minister must consult the Fuel Standards Consultative Committee:
  (a) before granting, varying or revoking an approval under section 13; and
  (b) before making a determination under section 21; and

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(ba) before making a determination under section 22A; and

(c) before making a decision under subsection 35(2); and

(d) in preparing guidelines under section 22.

(2) The requirement to consult the Committee before granting or varying an approval under section 13 includes the requirement to consult the Committee in respect of the period for which the approval is to be in force.

(3) The Minister is not required to consult the Committee in relation to a determination made under section 21 within 6 months after the commencement of that section.

(4) The Minister must have regard to any recommendations of the Committee arising out of the consultation.

24B Consultation—extended period of effect of emergency approval

(1) The Minister must consult the Fuel Standards Consultative Committee before varying an emergency approval under section 17F.

(2) The Minister must have regard to any recommendations of the Committee arising out of the consultation.

24C Notification

(1) Before granting an emergency approval, the Minister must notify the Fuel Standards Consultative Committee of:

(a) the application for an emergency approval; and

(b) his or her intention to grant an emergency approval.

(2) If a variation of an approval is of a minor nature, the Minister must, as soon as practicable after varying the approval, notify the Committee of the variation.

(3) If an approval is varied only to add one or more regulated persons, the Minister must, as soon as practicable after varying the approval, notify the Committee of the variation.

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25 Membership of Committee

(1) The Committee consists of such members as the Minister determines.

Membership

(2) However, the Minister must ensure that the membership includes the following:

(a) 1 representative of each State, the Australian Capital Territory and the Northern Territory;

(b) 1 representative of the Commonwealth;

(c) 1 person representing fuel producers;

(d) 1 person representing a non-government body with an interest in the protection of the environment;

(e) 1 person representing the interests of consumers.

Appointment

(3) The Minister must appoint members by written instrument.

Chair

(4) The Minister must appoint a member to be the Chair of the Committee.

Part-time office

(5) Each member holds office on a part-time basis.

26 Procedures of Committee

The Committee is to determine its own procedures.

28 Remuneration

(1) A person who is a member of the Fuel Standards Consultative Committee is to be paid the remuneration that is determined by the Remuneration Tribunal.

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(2) If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(3) A person who is a member of the Fuel Standards Consultative Committee is to be paid the allowances that are prescribed by the regulations.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

29 Appointment conditions of committee members

The regulations may prescribe matters relating to the members of the Fuel Standards Consultative Committee, including, but not limited to, the following:

(a) term of appointment;
(b) resignation;
(c) disclosure of interests;
(d) termination of appointment;
(e) leave of absence.

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Division 7—Supply and importation of fuel additives

30 Offence—supplying a fuel additive

(1) A person commits an offence if:

(a) the person supplies a fuel additive in Australia; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel additive in the course of constitutional trade or commerce; and

(c) the fuel additive is covered by an entry in the Register.

Penalty: 250 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

30A Civil penalty—supplying a fuel additive

A person contravenes this section if:

(a) the person supplies a fuel additive in Australia; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel additive in the course of constitutional trade or commerce; and

(c) the fuel additive is covered by an entry in the Register.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

31 Offence—importing a fuel additive

(1) A person commits an offence if:

(a) the person imports a fuel additive into Australia; and

(b) the fuel additive is covered by an entry in the Register.

Penalty: 250 penalty units.

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(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

31A Civil penalty—importing a fuel additive

A person contravenes this section if:

(a) the person imports a fuel additive into Australia; and

(b) the fuel additive is covered by an entry in the Register.

Civil penalty:

(a) for an individual—250 penalty units; and

(b) for a body corporate—1,250 penalty units.

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Division 8—Register of Prohibited Fuel Additives

32 Minister to keep Register

(1) The Minister must keep a Register of Prohibited Fuel Additives.

(2) The Register may be maintained by electronic means.

33 Inspection of the Register

(1) The Minister must make the Register available for any person to inspect it at the times and places published in the *Gazette*.

(2) The Register is also to be made available for inspection on the internet.

34 Notice of proposed entries in the Register

(1) The Minister may:
  (a) enter a fuel additive, or a class of fuel additives, in the Register; or
  (b) remove a fuel additive, or a class of fuel additives, from the Register.

(2) Before doing so, the Minister must publish, in accordance with the regulations, notice of the action he or she is proposing to take.

(3) The notice must:
  (a) invite persons to make submissions on the proposal; and
  (b) specify the addresses (including an internet address) to which submissions may be sent; and
  (c) specify the day by which submissions must be sent (which must be at least 60 days after the day the notice is published).

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35 Minister to consider submissions and make a decision

Minister to consider submissions

(1) The Minister must consider all submissions received by the day specified in the notice.

Minister's decision

(2) The Minister must then make a decision whether or not to:
  (a) enter the fuel additive, or the class of fuel additives, in the Register; or
  (b) remove the fuel additive, or the class of fuel additives, from the Register.

General notice

(3) The Minister must publish, in accordance with the regulations, notice of his or her decision.

Notice to persons who made submissions

(4) The Minister must also give notice of his or her decision to each person who made a submission. The notice must include a statement to the effect that an application may be made to the Administrative Appeals Tribunal for review of the decision.

36 Guidelines for making a decision

(1) The Minister must, by legislative instrument, develop guidelines that he or she must have regard to when deciding whether or not to:
  (a) enter a fuel additive, or a class of fuel additives, in the Register; or
  (b) remove a fuel additive, or a class of fuel additives, from the Register.

(2) The guidelines are to be made available for inspection on the internet.

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Part 3—Enforcement

Division 1—Overview

37 Overview of Part

This Part mainly sets out an enforcement regime for the purpose of finding out whether this Act has been complied with or of assessing the correctness of information provided under this Act.

Division 2 provides for the appointment of inspectors.

Divisions 3 to 7 deal with the powers and obligations of inspectors and the rights and responsibilities of an occupier of premises when an inspector seeks to exercise powers.

Division 7A deals with the analysis of samples taken under this Part and the evidentiary value of certificates containing information about the analysis of such samples.

Division 8 deals with monitoring warrants and enforcement warrants.

Division 9 deals with the powers of magistrates under this Part.

Division 10 deals with injunctions restraining a person from engaging in conduct that would otherwise be an offence against this Act or a contravention of a civil penalty provision.

Division 11 sets out the procedure for obtaining an order that a pecuniary penalty be paid for the contravention of a civil penalty provision.

Division 12 allows a person to be given an infringement notice and, in most cases, avoid prosecution or civil proceedings if the person pays the amount required by the notice.

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Division 13 allows for the Secretary to accept and enforce enforceable undertakings in relation to an offence against this Act or a contravention of a civil penalty provision.

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Division 2—Appointment of inspectors and identity cards

38 Appointment of inspectors

(1) The Secretary may, in writing, appoint any of the following persons as an inspector for the purposes of this Act:

(a) a person who is appointed or employed by the Commonwealth;

(b) a person who is appointed or employed by a State or Territory.

(2) The Secretary must not appoint a person as an inspector unless the Secretary is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.

(3) An inspector must, in exercising powers or performing functions as an inspector, comply with any directions of the Secretary.

39 Identity card

(1) The Secretary must issue an identity card to an inspector.

Form of identity card

(2) The identity card must:

(a) be in the form prescribed by the regulations; and

(b) contain a recent photograph of the inspector.

Offence

(3) A person commits an offence if:

(a) the person has been issued with an identity card; and

(b) the person ceases to be an inspector; and

(c) the person does not return the identity card to the Secretary as soon as practicable.

Penalty: 1 penalty unit.

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(4) Subsection (3) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Defence: card lost or destroyed

(5) However, the person does not commit the offence if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Inspector must carry card

(6) An inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.

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Division 3—Monitoring powers

40 Powers available to inspectors for monitoring compliance

(1) For the purpose of finding out whether this Act has been complied with or of assessing the correctness of information provided under this Act, an inspector may:

(a) do both of the following:

(i) enter any premises;

(ii) exercise the monitoring powers set out in section 41; or

(b) do both of the following:

(i) enter a public area of business premises when the premises are open to the public;

(ii) exercise the powers set out in section 41A.

(2) However, an inspector is not authorised to enter premises under paragraph (1)(a) unless:

(a) the occupier of the premises has consented to the entry; or

(b) the entry is made under a monitoring warrant.

(3) Paragraph (1)(b) does not affect any right of the occupier of business premises to refuse to allow an inspector to enter, or remain on, the premises.

41 Monitoring powers—with consent or with warrant

General powers

(1) For the purposes of this Part, the following are the ***monitoring powers*** that an inspector may exercise in relation to premises under paragraph 40(1)(a):

(a) to search the premises and any thing on the premises;

(b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any fuel or fuel additive on the premises;

(c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;

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(d) to inspect any book, record or document on the premises;

(e) to take extracts from or make copies of any such book, record or document;

(f) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;

(g) to secure a thing, until an enforcement warrant is obtained to seize it:

(i) that the inspector finds during the exercise of monitoring powers on the premises; and

(ii) that the inspector believes on reasonable grounds is evidential material; and

(iii) that the inspector believes on reasonable grounds would be lost, destroyed or tampered with before the warrant can be obtained;

(h) the powers in subsections (2) and (3).

Note: See also Division 7A (about the dealing with samples taken by an inspector and the evidentiary value of certificates containing information about the analysis of such samples).

Operation of equipment

(2) For the purposes of this Part, the ***monitoring powers*** include the power to operate equipment at premises to find out whether:

(a) the equipment; or

(b) a disk, tape or other storage device that is at the premises and can be used with the equipment or is associated with it;

contains information that is relevant to:

(c) determining whether there has been compliance with this Act; or

(d) assessing the correctness of information provided under this Act.

Removing documents and disks etc.

(3) For the purposes of this Part, if the inspector, after operating the equipment, finds that the equipment, or that a disk, tape or other

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storage device at the premises, contains such information, the ***monitoring powers*** include the following powers:

(a) to operate facilities at the premises to put the information in documentary form and remove the documents so produced;

(b) to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

How powers to be exercised

(4) The powers mentioned in subsections (2) and (3) must be exercised in accordance with section 49.

41A Exercise of powers in public areas of business premises

An inspector may exercise the following powers in relation to a public area of business premises under paragraph 40(1)(b):

(a) the power to inspect, examine, take measurements of, conduct tests on, or take samples of, any fuel or fuel additive in the area;

(b) the power to take photographs, make video or audio recordings or make sketches of the area or any thing in the area;

(c) the power to take into the area such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the area.

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42 Inspector on premises under monitoring warrant may require persons to answer questions etc.

(1) An inspector who is authorised to enter premises by a monitoring warrant may require any person in or on the premises to:

(a) answer any questions put by the inspector; or

(b) produce any book, record or document requested by the inspector.

(2) A person commits an offence if the person refuses or fails to comply with a requirement under subsection (1).

Penalty: Imprisonment for 6 months.

(3) A person is excused from complying with a requirement under subsection (1) if the answer to the question or the production of the book, record or document might tend to incriminate the person or expose the person to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

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Division 4—Search and seizure powers

43 Searches and seizures

(1) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
  (a) enter the premises; and
  (b) exercise the powers set out in section 44.

(2) However, an inspector is not authorised to enter the premises unless:
  (a) the occupier of the premises has consented to the entry; or
  (b) the entry is made under an enforcement warrant.

(3) If the entry is under an enforcement warrant, the inspector may seize the evidential material if the inspector finds it on the premises.

44 Search and seizure powers

General powers

(1) An inspector may exercise the following powers in relation to premises under section 43:
  (a) to search the premises and any thing on the premises for the evidential material;
  (b) to inspect, examine, take measurements of, conduct tests on, or take samples of the evidential material;
  (c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material;
  (d) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
  (e) the powers in subsections (2), (3) and (7).

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Note: See also Division 7A (about the dealing with samples taken by an inspector and the evidentiary value of certificates containing information about the analysis of such samples).

Operation of equipment

(2) An inspector also has the power to operate equipment at premises to find out whether evidential material is accessible by doing so.

Removing documents and disks etc.

(3) If the inspector, after operating the equipment, finds that evidential material is accessible by doing so, the inspector also has the following powers:

(a) to seize the equipment and any disk, tape or other associated device;

(b) to operate the equipment or other facilities at the premises to put the evidential material in documentary form and seize the documents so produced;

(c) to operate the equipment or other facilities at the premises to transfer the material to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

and remove the disk, tape or other storage device from the premises.

How powers to be exercised

(4) The powers mentioned in subsections (2) and (3) must be exercised in accordance with section 49.

Seizing equipment

(5) An inspector may seize equipment under paragraph (3)(a) only if:

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(a) it is not practicable to put the material in documentary form as mentioned in paragraph (3)(b) or to transfer the material as mentioned in paragraph (3)(c); or

(b) possession by the occupier of the equipment could constitute an offence against a law of the Commonwealth.

(6) An inspector may seize equipment under paragraph (3)(a) or documents under paragraph (3)(b) only if the inspector entered the premises under an enforcement warrant.

Seizing other evidential material

(7) If:

(a) in the course of searching for a particular thing, in accordance with an enforcement warrant, an inspector finds another thing that the inspector believes on reasonable grounds to be evidential material; and

(b) the inspector believes, on reasonable grounds, that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction, or its use:

(i) in committing, continuing or repeating an offence against this Act; or

(ii) in committing, continuing or repeating a contravention of a civil penalty provision;

then the inspector may seize that other thing.

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Division 5—Obligations and incidental powers of inspectors

45 Inspector must produce identity card on request

An inspector is not entitled to exercise any powers under this Part in relation to premises if:

(a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and

(b) the inspector fails to comply with the requirement.

46 Consent

(1) An inspector must, before obtaining the consent of a person to enter premises under this Part, inform the person that he or she may refuse consent.

(2) An entry of an inspector with the consent of a person is not lawful unless the person voluntarily consented to the entry.

47 Announcement before entry

(1) An inspector must, before entering premises under a warrant:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

(2) However, an inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:

(a) to ensure the safety of a person; or

(b) to prevent serious damage to the environment; or

(c) to ensure that the effective execution of the warrant is not frustrated.

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48 Details of warrant to be given to occupier etc.

(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector must make available to the occupier or other person a copy of the warrant.

(2) The inspector must identify himself or herself to that person.

(3) The copy of the warrant need not include the signature of the magistrate who issued the warrant.

49 Use of electronic equipment already at premises

An inspector may operate electronic equipment at premises in order to exercise a power under this Part if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

50 Securing electronic equipment for use by experts

(1) If an inspector believes on reasonable grounds that:

(a) any of the following:

(i) information relevant to determining whether there has been compliance with this Act;

(ii) information relevant to assessing the correctness of information provided under this Act;

(iii) evidential material;

may be accessible by operating electronic equipment at particular premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the information or material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

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Notice to occupier

(2) The inspector must give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

(3) The equipment may be secured:
  (a) for a period not exceeding 24 hours; or
  (b) until the equipment has been operated by the expert;
whichever happens first.

Extensions

(4) If the inspector believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an order extending that period.

(5) The inspector must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

(6) The magistrate may order an extension for a period specified in the order if the magistrate is satisfied that the extension is necessary.

51 Compensation for damage to electronic equipment

(1) If:
  (a) damage is caused to equipment as a result of it being operated as mentioned in this Part; or
  (b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;
because:
  (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
  (d) insufficient care was exercised by the person operating the equipment;

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the owner of the equipment, or the user of the data or programs, is entitled to compensation for the damage or corruption.

Amount of compensation

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation as the Commonwealth and the owner or user agree on.

(3) However, if the Commonwealth and the owner or user fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.

(4) Compensation is payable out of money appropriated by the Parliament.

(5) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Damage to data

(6) For the purposes of subsection (1), ***damage to data*** includes damage by erasure of data or addition of other data.

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Division 6—Occupier's rights and responsibilities

52 Occupier entitled to be present during search

(1) If a warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier is present at the premises, the occupier or other person is entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the occupier or other person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

53 Occupier to provide inspector with all facilities and assistance

(1) The occupier of premises in relation to which a warrant is being exercised, or another person who apparently represents the occupier, must provide the inspector executing the warrant and any person assisting that inspector with all reasonable facilities and assistance for the effective exercise of their powers.

(2) A person commits an offence if the person fails to comply with the obligation set out in subsection (1).

Penalty: 30 penalty units.

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Division 7—General provisions relating to seizure

54 Copies of seized things to be provided

(1) If, under an enforcement warrant relating to premises, an inspector seizes:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device, the information in which can be readily copied;

the inspector must, if requested to do so by the occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.

(2) However, subsection (1) does not apply if:

(a) the thing that has been seized was seized under paragraph 44(3)(b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against a law of the Commonwealth.

55 Receipts for things seized

(1) If a thing is seized under this Part, the inspector must provide a receipt for the thing.

(2) If 2 or more things are seized, they may be covered in the one receipt.

56 Return of seized things

(1) Subject to any contrary order of a court, if an inspector seizes a thing under this Part, the inspector must return it if:

(a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or

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(b) the period of 60 days after its seizure ends;

whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth.

(2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the thing to the person from whom it was seized, unless:

(a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or

(b) an inspector may retain the thing because of an order under section 57; or

(c) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or

(d) an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy or dispose of the thing.

(3) The thing may be returned under subsection (2) either unconditionally or on such terms and conditions as the Secretary sees fit.

57 Magistrate may permit a thing to be retained

(1) An inspector may apply to a magistrate for an order that he or she may retain the thing for a further period if:

(a) before the end of 60 days after the seizure; or

(b) before the end of a period previously specified in an order of a magistrate under this section;

proceedings in respect of which the thing may afford evidence have not commenced.

(2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the thing:

(a) for the purpose of an investigation as to whether:

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(i) an offence against this Act has been committed; or
(ii) a civil penalty provision has been contravened; or

(b) to enable:
(i) evidence of an offence against this Act to be secured for the purpose of a prosecution; or
(ii) evidence of a contravention of a civil penalty provision to be secured for the purpose of civil proceedings;

the magistrate may order that an inspector may retain the thing for a period (not being a period exceeding 3 years) specified in the order.

(3) Before making the application, the inspector must:
(a) take reasonable steps to discover who has an interest in the retention of the thing; and
(b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.

58 Disposal of goods if there is no owner or owner cannot be located

If:
(a) a thing is seized under this Part; and
(b) apart from this section, the Commonwealth is required to return the thing to the owner; and
(c) there is no owner or the Secretary cannot, despite making reasonable efforts, locate the owner;

the Secretary may dispose of the thing in such manner as he or she thinks appropriate.

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Division 7A—Analysing samples taken under this Part etc.

58A How sample is to be dealt with

(1) The regulations may prescribe procedures for dealing with samples of any fuel, fuel additive or evidential material, taken by an inspector under this Part.

Conducting of tests

(2) The regulations may provide for inspectors to arrange for tests to be carried out on such samples by other persons.

Substantial compliance with some procedures is sufficient

(3) The regulations may provide that particular procedures (the ***routine procedures***) prescribed for the purposes of this section need not be strictly complied with and substantial compliance is sufficient.

(4) However, subsection (3) does not apply to procedures for ensuring that a sample is not interfered with by anyone who is not authorised to do so.

Effect of non-compliance with the procedures

(5) If:

(a) the routine procedures are not substantially complied with in relation to a sample; or

(b) the other procedures are not strictly complied with in relation to a sample;

then any certificate given under section 58B in relation to the sample is of no effect.

Subsection (1) not limited

(6) Subsections (2) and (3) do not limit subsection (1).

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58B Evidentiary certificates in relation to certain matters

(1) This section applies to:

(a) proceedings for an offence against a provision of Part 2 (***offence proceedings***); or

(b) proceedings for a contravention of a civil penalty provision of Part 2.

Signing of certificate

(2) Subject to subsection (4), a certificate signed by any of the following persons:

(a) an accredited person;

(b) an authorised person in relation to an accredited laboratory;

stating, in respect of a substance, any one or more of the following:

(c) that the person who signed the certificate was an accredited person or an authorised person in relation to an accredited laboratory (as the case may be);

(d) when and from whom the substance was received;

(e) what, if any, labels or other means of identifying the substance accompanied it when it was received;

(f) what container or containers the substance was contained in when it was received;

(g) the state of the seals on the container or containers when the substance was received;

(h) a description of the substance received;

(i) when the substance, or a portion of it, was analysed;

(j) a description of the method of analysis;

(k) the results of the analysis;

is admissible as prima facie evidence of the matters stated in the certificate and of the correctness of the results of the analysis.

Document taken to be a certificate under subsection (2) unless contrary intention established

(3) For the purposes of this section, a document purporting to be a certificate referred to in subsection (2) is, unless the contrary

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intention is established, taken to be such a certificate and to have been duly given.

Certificate not to be admitted unless copy given to defendant 14 days before certificate to be admitted in evidence

(4) A certificate must not be admitted in evidence under subsection (2) in offence proceedings unless:

(a) the person charged with the offence; or

(b) a barrister or solicitor who has appeared for the person in those proceedings;

has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable evidence of the intention to produce the certificate as evidence in the proceedings.

Person signing the certificate may be called to give evidence

(5) Subject to subsection (6), if, under subsection (2), a certificate is admitted in evidence in offence proceedings, the person charged with the offence may require the person who signed the certificate to be called as a witness for the prosecution and cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:

(a) the prosecutor has been given at least 4 days notice of the person's intention to require the person who signed the certificate to be so called; or

(b) the court, by order, allows the person charged to require the person who signed the certificate to be so called.

Evidence in support of rebuttal of matters in certificate to be considered on its merits

(7) Any evidence given in support, or in rebuttal, of a matter stated in a certificate given under subsection (2) must be considered on its

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merits and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

Interpretation

(8) In this section:

accredited laboratory means a laboratory or similar undertaking that, under the regulations, is an accredited laboratory for the purposes of this Act.

accredited person means a person that, under the regulations, is an accredited person for the purposes of this Act.

authorised person, in relation to an accredited laboratory, means a person that, under the regulations, is an authorised person in relation to an accredited laboratory for the purposes of this Act.

(9) For the purposes of subsection (8):

(a) regulations made for the purposes of the definition of ***accredited laboratory*** may provide that a laboratory or similar undertaking is an accredited laboratory if it has been accredited or otherwise approved by another person or body; and

(b) regulations made for the purposes of the definition of ***accredited person*** may provide that a person is an accredited person if the person has been accredited or otherwise approved by another person or body; and

(c) regulations made for the purposes of the definition of ***authorised person*** may provide that a person is an authorised person in relation to an accredited laboratory if the person has been accredited or otherwise approved by another person or body.

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Division 8—Warrants

59 Monitoring warrants

Application for a monitoring warrant

(1) An inspector may apply to a magistrate for a monitoring warrant under this section in relation to premises.

Issue of a monitoring warrant

(2) The magistrate may issue the monitoring warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of:

(a) finding out whether this Act has been complied with; or

(b) assessing the correctness of information provided under this Act.

(3) However, the magistrate must not issue the monitoring warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of a monitoring warrant

(4) The monitoring warrant must:

(a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:

(i) to enter the premises; and

(ii) to exercise the powers set out in section 41 in relation to the premises; and

(b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

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(c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purpose for which the warrant is issued.

60 Enforcement warrants

Application for an enforcement warrant

(1) An inspector may apply to a magistrate for an enforcement warrant under this section in relation to premises.

Issue of an enforcement warrant

(2) The magistrate may issue the enforcement warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.

(3) However, the magistrate must not issue the enforcement warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of an enforcement warrant

(4) The enforcement warrant must:

(a) name one or more inspectors; and

(b) authorise the inspectors so named, with such assistance and by such force as is necessary and reasonable:

(i) to enter the premises; and

(ii) to exercise the powers set out in section 44; and

(iii) to seize the evidential material; and

(c) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and

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(e) state the purpose for which the warrant is issued.

61 Enforcement warrants by telephone, telex, fax etc.

Application for an enforcement warrant

(1) If, in an urgent case, an inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, telex, fax or other electronic means for an enforcement warrant in relation to premises.

(2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

(3) Before applying for the enforcement warrant, the inspector must prepare an information of the kind mentioned in subsection 60(2) in relation to the premises that sets out the grounds on which the warrant is sought.

(4) If it is necessary to do so, the inspector may apply for the enforcement warrant before the information is sworn.

Issue of an enforcement warrant

(5) If the magistrate is satisfied:
   (a) after having considered the terms of the information; and
   (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the enforcement warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 60 if the application had been made under that section.

Obligations of magistrate and inspector once an enforcement warrant issued

(6) If the magistrate completes and signs the enforcement warrant:
   (a) the magistrate must:

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(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the day on which and the time at which the warrant was signed; and

(iii) tell the inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and

(iv) record on the warrant the reasons for issuing the warrant; and

(b) the inspector must:

(i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

(ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) The inspector must also, not later than the day after the day of expiry or execution of the enforcement warrant, whichever is the earlier, send to the magistrate:

(a) the form of warrant completed by the inspector; and

(b) the information referred to in subsection (3), which must have been duly sworn.

(8) When the magistrate receives those documents, the magistrate must:

(a) attach them to the enforcement warrant that the magistrate completed and signed; and

(b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 60.

Authority of an enforcement warrant

(9) A form of enforcement warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.

(10) If:

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(a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and

(b) the enforcement warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

62 Offences relating to warrants

(1) An inspector must not make, in an application for a warrant, a statement that the inspector knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

(2) An inspector must not:

(a) state in a document that purports to be a form of warrant under section 61 the name of a magistrate unless that magistrate issued the enforcement warrant; or

(b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the form authorised by the magistrate; or

(c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:

(i) has not been approved by a magistrate under that section; or

(ii) departs in a material particular from the terms authorised by a magistrate under that section; or

(d) give to a magistrate a form of warrant under that section that is not the form of enforcement warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

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Division 9—Powers of magistrates

63 Powers conferred on magistrates in their personal capacity

(1) A power conferred on a magistrate by this Part is conferred on the magistrate in a personal capacity and not as a court or a member of a court.

(2) The magistrate need not accept the power conferred.

64 Immunity of magistrates

A magistrate exercising a power mentioned in subsection 63(1) has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

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Division 10—Injunctions

65 Injunctions

Grant of injunction

(1) If a person has engaged, is engaging, or is about to engage, in any conduct that is or would be:

(a) an offence against this Act; or

(b) a contravention of a civil penalty provision;

a Court may, on the application of the Minister or any other aggrieved person, grant an injunction restraining the person from engaging in the conduct.

(2) If:

(a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and

(b) the refusal or failure is, or would be:

(i) an offence against this Act; or

(ii) a contravention of a civil penalty provision;

a Court may, on the application of the Minister or any other aggrieved person, grant an injunction requiring the person to do the thing.

(2A) An individual is taken to be a person aggrieved by the conduct, refusal or failure mentioned in subsection (1) or (2) if:

(a) the individual is an Australian citizen or ordinarily resident in Australia; and

(b) at any time in the 2 years immediately before the conduct, refusal or failure, the individual has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment.

(2B) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the conduct, refusal or failure mentioned in subsection (1) or (2) if:

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(a) the organisation or association is incorporated, or was otherwise established, in Australia; and

(b) at any time in the 2 years immediately before the conduct, refusal or failure, the organisation or association has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment; and

(c) at the time of the conduct, refusal or failure, the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.

(2C) To avoid doubt, subsections (2A) and (2B) extend the meaning of the term ***aggrieved person*** for the purposes of an application to a Court under this section.

(3) The power of a Court to grant an injunction may be exercised:

(a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind.

(4) A Court may discharge or vary an injunction granted by the Court under this section.

Interim injunction

(5) A Court may grant an interim injunction pending a determination of an application under subsection (1).

Other powers

(6) The powers granted by this section are in addition to, and not in derogation of, any other powers of a Court.

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Division 11—Civil penalties

Subdivision A—Obtaining an order for a civil penalty

65A Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

(1) Within 6 years of a person (the ***wrongdoer***) contravening a civil penalty provision, the Minister may apply to a Court for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

Court may order wrongdoer to pay pecuniary penalty

(2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth, for each contravention, the pecuniary penalty that the Court determines is appropriate (but not more than the relevant amount specified for the provision).

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

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Civil evidence and procedure rules apply

(4) The Court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for an order under this section.

Note: The standard of proof in civil proceedings is the balance of probabilities: see section 140 of the *Evidence Act 1995*.

65B Persons involved in contravening civil penalty provision

(1) A person must not:
(a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
(b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
(c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
(d) conspire to contravene a civil penalty provision.

(2) This Act applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

65C Recovery of a pecuniary penalty

If a Court orders a person to pay a pecuniary penalty:
(a) the penalty is payable to the Commonwealth; and
(b) the Commonwealth may enforce the order as if it were a judgment of the Court.

65D Gathering information for application for pecuniary penalty

(1) This section applies if it appears to the Secretary that a person (the ***wrongdoer***) may have contravened a civil penalty provision.

(2) If the Secretary, on reasonable grounds, suspects that a person other than the wrongdoer can give information relevant to an application for a civil penalty order in relation to the contravention,

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whether or not such an application has been made, the Secretary may, by writing given to the person, require the person to give all reasonable assistance in connection with such an application.

(3) Subsection (2) does not apply in relation to a duly qualified legal practitioner who is acting, or has acted, for the wrongdoer.

(4) If a person fails to give assistance as required under subsection (2), a Court may, on the application of the Secretary, order the person to comply with the requirement as specified in the order.

(5) If a person fails to give assistance as required under subsection (2), the person commits an offence against this subsection.

Penalty: 30 penalty units.

(6) A requirement made under subsection (2) is not a legislative instrument.

Subdivision B—Civil penalty proceedings and criminal proceedings

65E Civil proceedings after criminal proceedings

A Court must not order a person to pay a pecuniary penalty for contravening a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

65F Criminal proceedings during civil proceedings

(1) Proceedings for an order for a person to pay a pecuniary penalty for contravening a civil penalty provision are stayed if:

(a) criminal proceedings are started, or have already been started, against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

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(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

65G Criminal proceedings after civil proceedings

Criminal proceedings may not be started against a person for conduct that is substantially the same as conduct that contravenes a civil penalty provision if the person has been ordered to pay a pecuniary penalty under this Act for the contravention.

65H Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings for an offence against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for an order for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

65J Civil double jeopardy

If a person is ordered to pay a pecuniary penalty for contravening a civil penalty provision in respect of particular conduct, the person is not liable to a pecuniary penalty under some other provision of a law of the Commonwealth in respect of that conduct.

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Subdivision C—Miscellaneous

65K Multiple contraventions of civil penalty provisions

(1) Proceedings against a person for any number of orders to pay pecuniary penalties for contraventions of a civil penalty provision that are founded on the same facts or form, or are part of, a series of contraventions of the same or a similar character, may be joined.

(2) A Court may make a single order to pay a pecuniary penalty for all the contraventions described in subsection (1), but the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

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Division 12—Infringement notices

65L When an infringement notice may be given

(1) If an inspector has reasonable grounds to believe that:

(a) a person has committed an offence against this Act; or

(b) a person has contravened a civil penalty provision;

the inspector may give the person an infringement notice relating to the offence or contravention.

(2) The infringement notice must be given within 12 months after:

(a) the day on which the offence is alleged to have been committed; or

(b) the day on which the civil penalty provision is alleged to have been contravened.

65M Matters to be included in an infringement notice

(1) An infringement notice must:

(a) be identified by a unique number; and

(b) state the day on which the notice is given; and

(c) state the name of the person to whom the notice is given; and

(d) state the name of the person who gave the notice; and

(e) if the notice relates to an offence—give brief details of the offence that the person is alleged to have committed, including:

(i) the provision of this Act that was allegedly contravened; and

(ii) the maximum penalty that a court could impose for the offence; and

(iii) the time (if known) and day on which, and the place at which, the offence was alleged to have been committed; and

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(f) if the notice relates to the contravention of a civil penalty provision—give brief details of the civil penalty provision that the person is alleged to have contravened, including:
  (i) the provision of this Act that was allegedly contravened; and
  (ii) the maximum penalty that a court could impose for the contravention; and
  (iii) the time (if known) and day on which, and the place at which, the civil penalty provision was alleged to have been contravened; and
(g) state the penalty that is payable under the notice; and
(h) give an explanation of how payment of the penalty is to be made; and
(i) state that, if the person pays the penalty within 28 days after the day the notice is given, criminal or civil proceedings will not be brought against the person under this Act in respect of the conduct to which the notice relates, unless the notice is withdrawn; and
(j) state that payment of the penalty is not an admission of guilt or liability; and
(k) state that the person may apply to the Secretary to have the period in which to pay the penalty extended; and
(l) state that the person may choose not to pay the penalty and, if the person does so, criminal or civil proceedings may be brought against the person under this Act in respect of the conduct to which the notice relates; and
(m) set out how the notice can be withdrawn; and
(n) state that if the notice is withdrawn:
  (i) any amount of penalty paid under the notice must be refunded; and
  (ii) criminal or civil proceedings may be brought against the person in respect of the conduct to which the notice relates; and
(o) state that the person may make written representations to the Secretary seeking the withdrawal of the notice; and

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(p) set out such other matters (if any) as are specified by the regulations.

(2) For the purposes of paragraph (1)(g) in relation to an offence:

(a) if an individual is alleged to have committed the offence—the penalty to be stated in the notice must not exceed an amount equal to one-fifth of the maximum penalty that could have been imposed on the individual for the offence; and

(b) if a body corporate is alleged to have committed the offence—the penalty to be stated in the notice must not exceed an amount equal to one-fifth of the maximum penalty that could have been imposed on the body corporate for the offence.

(3) For the purposes of paragraph (1)(g) in relation to a civil penalty provision, the penalty to be stated in the notice must not exceed an amount equal to one-fifth of the maximum penalty prescribed for contravening the provision.

65N Extension of time to pay penalty

(1) A person to whom an infringement notice has been given may apply to the Secretary for an extension of the period referred to in paragraph 65M(1)(i).

(2) If the application is made before the end of that period, the Secretary may, in writing, extend that period. The Secretary may do so before or after the end of that period.

(3) If the Secretary extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 65M(1)(i) is taken to be a reference to that period so extended.

(4) If the Secretary does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 65M(1)(i) is taken to be a reference to the period that ends on the later of the following days:

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(a) the day that is the last day of the period referred to in paragraph 65M(1)(i);
(b) the day that is 7 days after the day the person was given notice of the Secretary's decision not to extend.

(5) The Secretary may extend the period more than once under subsection (2).

65P Withdrawal of an infringement notice

Representations seeking withdrawal of notice

(1) A person to whom an infringement notice has been given may make written representations to the Secretary seeking the withdrawal of the notice.

Withdrawal of notice (whether or not representations have been made)

(2) An inspector may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

(3) When deciding whether or not to withdraw an infringement notice, the inspector:
(a) must take into account any written representations seeking the withdrawal that were given by the person to the Secretary; and
(b) may take into account the matters set out in subsection (4).

(4) The matters to which the inspector may take into account are the following:
(a) whether the person has previously been convicted of an offence against this Act or been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision;
(b) if the notice relates to an offence—the circumstances in which the offence is alleged to have been committed;

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(c) if the notice relates to a civil penalty provision—the circumstances in which the contravention took place;

(d) whether the person has previously been given an infringement notice relating to:

(i) an offence of the same type as the offence specified in the notice; or

(ii) a civil penalty provision that is constituted by conduct that is substantially the same as the conduct alleged to constitute the offence specified in the notice;

and in relation to which the person paid the penalty stated in the notice;

(e) whether the person has previously been given an infringement notice relating to:

(i) a civil penalty provision of the same type as the civil penalty provision specified in the notice; or

(ii) an offence that is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention of the civil penalty provision specified in the notice;

and in relation to which the person paid the penalty stated in the notice;

(f) any other matter the inspector considers relevant.

Notice of withdrawal

(5) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

(a) the person's name and address; and

(b) the day the infringement notice was given; and

(c) that the infringement notice is withdrawn; and

(d) that criminal or civil proceedings may be brought against the person in respect of the conduct to which the infringement notice relates.

Refund of penalty if infringement notice withdrawn

(6) If:

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(a) an inspector withdraws the infringement notice; and

(b) the person has already paid the penalty stated in the notice;

the Commonwealth must refund to the person an amount equal to the amount paid.

65Q Effect of payment of penalty

Infringement notice relates to an offence

(1) If an infringement notice relates to an offence and the person to whom the notice is given pays the penalty stated in the notice before the end of the period referred to in paragraph 65M(1)(i):

(a) any liability of the person for the alleged offence is discharged; and

(b) a prosecution for the alleged offence may not be brought against the person; and

(c) if a civil penalty provision relates to conduct substantially the same as the conduct alleged to constitute the offence—civil proceedings for a contravention of the civil penalty provision may not be brought against the person; and

(d) the person is not regarded as having admitted guilt or liability for the alleged offence; and

(e) the person is not regarded as having been convicted of the alleged offence.

Infringement notice relates to civil penalty provision

(2) If an infringement notice relates to a contravention of a civil penalty provision and the person to whom the notice is given pays the penalty stated in the notice before the end of the period referred to in paragraph 65M(1)(i):

(a) any liability of the person for the alleged contravention is discharged; and

(b) civil proceedings in respect of the alleged contravention may not be brought against the person; and

(c) if an offence relates to conduct substantially the same as the conduct alleged to constitute the contravention—a

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prosecution for the offence may not be brought against the person; and

(d) the person is not regarded as having admitted liability for the alleged contravention.

(3) Subsections (1) and (2) do not apply if the notice has been withdrawn.

65R Effect of this Division

This Division does not:

(a) require an infringement notice to be given to a person; or

(b) affect the liability of a person to be prosecuted for an offence if:

(i) the person does not comply with an infringement notice given to the person; or

(ii) an infringement notice is not given to the person for the offence; or

(iii) if a civil penalty provision is constituted by conduct that is substantially the same as the conduct alleged to constitute the offence—an infringement notice is not given to the person in relation to the civil penalty provision; or

(iv) an infringement notice is given to the person and is subsequently withdrawn; or

(c) affect the liability of a person to be subject to civil proceedings for the contravention of a civil penalty provision if:

(i) the person does not comply with an infringement notice given to the person; or

(ii) an infringement notice is not given to the person for the contravention; or

(iii) if an offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention—an infringement notice is not given to the person in relation to the offence; or

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(iv) an infringement notice is given to the person and is subsequently withdrawn; or

(d) prevent the giving of 2 or more infringement notices to a person for:

(i) an alleged offence; or

(ii) an alleged contravention of a civil penalty provision; or

(e) limit a court's discretion to determine the amount of a penalty to be imposed on a person:

(i) convicted of an offence against this Act; or

(ii) who has contravened a civil penalty provision.

65S Regulations

The regulations may make further provision in relation to infringement notices.

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Division 13—Enforceable undertakings

65T Acceptance of undertakings

(1) The Secretary may accept a written undertaking given by a person if the Secretary considers that the person has committed an offence against, or contravened a civil penalty provision of, this Act.

(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Secretary.

(3) The Secretary may, by written notice given to the person, cancel the undertaking.

(4) The Secretary may publish the undertaking on the internet.

65U Enforcement of undertakings

(1) If the Secretary considers that a person who gave an undertaking under section 65T has breached any of its terms, the Secretary may apply to a Court for an order under subsection (2).

(2) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

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Part 4—Record keeping and reporting obligations

66 Offence—failure to keep and maintain records

(1) If:

(a) a person supplies fuel in Australia that is the subject of a fuel standard; and

(aa) in the case where the fuel standard specifies the circumstances in which the standard applies—the person supplies the fuel in Australia in those circumstances; and

(b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce;

the person must keep and maintain records in relation to such supplies in accordance with the regulations.

Penalty: 60 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

66A Civil penalty—failure to keep and maintain records

(1) This section applies if:

(a) a person supplies fuel in Australia that is the subject of a fuel standard; and

(b) in the case where the fuel standard specifies the circumstances in which the standard applies—the person supplies the fuel in Australia in those circumstances; and

(c) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce.

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(2) The person contravenes this subsection if the person does not keep and maintain records in relation to such supplies in accordance with the regulations.

Civil penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—300 penalty units.

67 Annual statements

Producers

(1) If:

(a) a person produces and supplies fuel in Australia during a calendar year; and

(b) the fuel is the subject of a fuel standard; and

(ba) in the case where the fuel standard specifies the circumstances in which the standard applies—the person supplies the fuel in Australia in those circumstances; and

(c) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce;

the person must provide an annual statement for the year.

Importers

(2) If:

(a) a person imports fuel into Australia, and supplies the fuel in Australia, during a calendar year; and

(b) the fuel is the subject of a fuel standard; and

(c) in the case where the fuel standard specifies the circumstances in which the standard applies—the person supplies the fuel in Australia in those circumstances;

the person must provide an annual statement for the year.

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When statement to be provided

(3) The statement must be provided on or before:
  (a) 14 February in the following year; or
  (b) any later day allowed by the Secretary.

Content of statement

(4) The statement must:
  (a) be in a form (which may be an electronic form) approved by the Secretary; and
  (b) contain any information required by the Secretary; and
  (c) be provided to the Secretary in accordance with the regulations.

Offence

(5) A person is guilty of an offence if the person contravenes a requirement of this section.

Penalty: 60 penalty units.

(6) Subsection (5) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

Civil penalty provision

(7) A person must not contravene a requirement of this section.

Civil penalty:
  (a) for an individual—60 penalty units; and
  (b) for a body corporate—300 penalty units.

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Part 5—Other matters

67A Disclosure of information

The Secretary may disclose, or authorise the disclosure of, information obtained under this Act if the Secretary reasonably believes:

(a) that it is necessary or appropriate to do so in the course of performing functions or exercising powers under this Act; or

(b) that the disclosure is likely to assist in the administration or enforcement of:

(i) a taxation law (within the meaning of the *Income Tax Assessment Act 1997*); or

(ii) a consumer protection law (within the meaning of the *Australian Postal Corporation Act 1989*); or

(iia) the *Fuel Security Act 2021*; or

(iii) any other prescribed Act.

68 Delegation by Minister

(1) The Minister may, in writing, delegate to the Secretary all or any of the Minister's powers or functions under this Act, other than the following:

(a) making a determination under section 21;

(b) making a determination under section 22A.

(1A) The Minister may, in writing, delegate to an SES employee or an acting SES employee all or any of the Minister's powers or functions under this Act, other than the following:

(a) granting, varying or revoking an emergency approval;

(b) making a determination under section 21;

(c) making a determination under section 22A.

(2) The delegate must, in exercising powers or functions under the delegation, comply with any directions of the Minister.

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69 Delegation by Secretary

(1) The Secretary may, in writing, delegate to an SES employee or an acting SES employee all or any of the Secretary's powers or functions under this Act.

(2) The delegate must, in exercising powers or functions under the delegation, comply with any directions of the Secretary.

70 Review of decisions

(1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions under this Act:

(a) a decision to refuse to grant an approval;

(b) a decision to grant an approval that is different from the approval applied for;

(c) a decision to specify a condition in an approval;

(d) a decision to vary or revoke an approval;

(da) a decision to refuse to vary an approval, other than a decision to refuse to vary an approval under section 17F;

(e) a decision to enter, or not to enter, a fuel additive, or a class of fuel additives, in the Register;

(f) a decision to remove, or not to remove, a fuel additive, or a class of fuel additives, from the Register.

(2) For the purposes of an application to the Administrative Appeals Tribunal under this section, the meaning of the term ***person whose interests are affected*** in section 27 of the *Administrative Appeals Tribunal Act 1975* is extended by subsections (3) and (4) of this section.

(3) An individual is taken to be a person whose interests are affected by a decision mentioned in subsection (1) if:

(a) the individual is an Australian citizen or ordinarily resident in Australia; and

(b) at any time in the 2 years immediately before the decision mentioned in subsection (1), the individual has engaged in a

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series of activities in Australia for protection or conservation of, or research into, the environment.

(4) An organisation or association (whether incorporated or not) is taken to be a person whose interests are affected by a decision mentioned in subsection (1) if:

(a) the organisation or association is incorporated, or was otherwise established, in Australia; and

(b) at any time in the 2 years immediately before the decision mentioned in subsection (1), the organisation or association has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment; and

(c) at the time of the decision mentioned in subsection (1), the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.

71 Annual report

(1) The Secretary must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the operation of this Act during the year.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

72 Review of operation of Act

Undertaking the review

(1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after the second anniversary of the commencement of Part 2 of this Act and afterwards at intervals of not longer than 5 years.

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Report to Minister

(2) The persons who undertake such a review must give the Minister a written report of the review.

Tabling of report

(3) The Minister must cause a copy of each report to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

Definition

(4) In this section:

independent review means a review undertaken by persons who:

(a) in the Minister's opinion possess appropriate qualifications to undertake the review; and

(b) include one or more persons who are not APS employees.

73 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fuel Quality Standards Act 2000	153, 2000	21 Dec 2000	ss. 1–11, 13–18, 21–29, 32–36 and 68–73: 23 Mar 2001 (*see Gazette* 2001, No. S98) Remainder: 1 Jan 2002 (*see Gazette* 2001, No. GN35)	
Environmental Legislation Amendment Act 2001	118, 2001	18 Sept 2001	Sch 2 (items 4–7): 18 Sept 2001 (s 2(1)) Sch 2 (items 2, 3, 8–13): never commenced (s 2(3)(b))	—
Fuel Quality Standards Amendment Act 2003	127, 2003	5 Dec 2003	5 Dec 2003	—
Energy Grants (Cleaner Fuels) Scheme (Consequential Amendments) Act 2004	42, 2004	21 Apr 2004	Schedule 1 (items 1–3) and Schedule 2 (items 1–3): 18 Sept 2003 (*see* s. 2(1)) Remainder: Royal Assent	—
Fuel Quality Standards Amendment Act 2009	107, 2009	6 Nov 2009	7 Nov 2009	Sch. 1 (items 16, 111, 119, 137)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137): 1 Mar 2010 (s 2(1) item 38)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 15): 24 June 2014	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 177, 392): 10 Mar 2016 (s 2(1) item 6)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fuel Security (Consequential and Transitional Provisions) Act 2021	66, 2021	29 June 2021	Sch 1 (items 2, 19): 30 June 2021 (s 2(1) item 2)	Sch 1 (item 19)

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s. 3	rs. No. 127, 2003
s. 4	am. No. 127, 2003; No. 107, 2009; No 31, 2014
s. 6	am. No. 107, 2009
s. 9	am. No. 127, 2003
s. 10	rep. No. 107, 2009
Part 2	
Division 1	
s. 11	am. No. 127, 2003; No. 107, 2009
Division 2	
Heading to s. 12	rs. No. 127, 2003; No. 107, 2009
s. 12	am. No. 127, 2003; No. 107, 2009; No 4, 2016
Note to s. 12(1)	rep. No. 127, 2003
s. 12AA	ad. No. 107, 2009
Heading to s. 12A	rs. No. 107, 2009
s. 12A	ad. No. 127, 2003
	am. No. 107, 2009; No 4, 2016
s. 12B	ad. No. 107, 2009
Division 3	
Subdivision A	
Heading to Subdiv. A of Div. 3 of Part 2	ad. No. 107, 2009
s. 13	am. No. 127, 2003; No. 107, 2009
s. 13A	ad. No. 107, 2009
s. 14	am. No. 107, 2009
s. 16	am. No. 107, 2009
Note to s. 17(1)	rep. No. 127, 2003
s. 17A	am. No. 127, 2003

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Endnote 4—Amendment history

Provision affected	How affected
s. 17B	ad. No. 107, 2009
Subdivision B	
Subdiv. B of Div. 3 of Part 2	ad. No. 107, 2009
ss. 17C–17F	ad. No. 107, 2009
Subdivision C	
Subdiv. C of Div. 3 of Part 2	ad. No. 107, 2009
s. 17G	ad. No. 107, 2009
Subdivision D	
Heading to Subdiv. D of Div. 3 of Part 2	ad. No. 107, 2009
Heading to s. 18	rs. No. 107, 2009
s. 18	am. No. 107, 2009; No 4, 2016
Note to s. 18(1)	rep. No. 127, 2003
Notes 1, 2 to s. 18(2)	rep. No. 127, 2003
s. 18A	ad. No. 107, 2009
Division 4	
Heading to s. 19	rs. No. 107, 2009
s. 19	am. No. 127, 2003; No. 107, 2009
Note to s. 19	rep. No. 127, 2003
s. 19A	ad. No. 107, 2009
Division 5	
Heading to s. 20	rs. No. 107, 2009
s. 20	am. No. 127, 2003; No. 107, 2009; No 4, 2016
Note to s. 20(1)	rep. No. 127, 2003
s. 20A	ad. No. 107, 2009
Division 6	
Heading to Div. 6 of Part 2	rs. No. 127, 2003
Heading to s. 21	am. No. 127, 2003
Subhead. to s. 21(5)	am. No. 127, 2003
s. 21	am. No. 127, 2003; No. 107, 2009
Heading to s. 22	am. No. 127, 2003

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Provision affected	How affected
s. 22	am. No. 107, 2009
s. 22A	ad. No. 127, 2003
	am. No. 107, 2009
Heading to s. 24A	rs. No. 107, 2009
s. 24A	am. No. 127, 2003; No. 107, 2009
ss. 24B, 24C	ad. No. 107, 2009
s. 27	rep. No. 107, 2009
s. 28	am. No. 107, 2009
Heading to s. 29	am. No. 107, 2009
s. 29	am. No. 107, 2009
Division 7	
Heading to s. 30	rs. No. 107, 2009
s. 30	am. No. 127, 2003; No. 107, 2009; No 4, 2016
Note to s. 30	rep. No. 127, 2003
s. 30A	ad. No. 107, 2009
Heading to s. 31	rs. No. 107, 2009
s. 31	am. No. 127, 2003; No. 107, 2009; No 4, 2016
Note to s. 31	rep. No. 127, 2003
s. 31A	ad. No. 107, 2009
Division 8	
ss. 33, 34	am. No. 8, 2010
s. 35	am. No. 118, 2001
s. 36	am. No. 107, 2009; No. 8, 2010
Part 3	
Division 1	
s. 37	am. No. 118, 2001; No. 107, 2009
Division 2	
s. 39	am. No. 127, 2003; No. 107, 2009; No 4, 2016
Note to s. 39(3)	rep. No. 127, 2003
Division 3	
s. 40	am. No. 107, 2009

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Endnote 4—Amendment history

Provision affected	How affected
Heading to s. 41	am. No. 107, 2009
s. 41	am. No. 107, 2009
Note to s. 41(1)	ad. No. 118, 2001
s. 41A	ad. No. 107, 2009
Heading to s. 42	am. No. 107, 2009
s. 42	am. No. 107, 2009; No 4, 2016
Note to s. 42(2)	rep. No. 127, 2003
Division 4	
Heading to Div. 4 of Part 3	rs. No. 107, 2009
Heading to s. 43	am. No. 107, 2009
s. 43	am. No. 107, 2009
Heading to s. 44	am. No. 107, 2009
s. 44	am. No. 107, 2009
Note to s. 44(1)	ad. No. 118, 2001
Division 5	
s. 51	am. No. 107, 2009
Division 6	
s. 53	am. No. 107, 2009; No 4, 2016
Note to s. 53(2)	rep. No. 127, 2003
Division 7	
s. 54	am. No. 107, 2009
s. 57	am. No. 107, 2009
Division 7A	
Div. 7A of Part 3	ad. No. 118, 2001
s. 58A	ad. No. 118, 2001
s. 58B	ad. No. 118, 2001
	am. No. 107, 2009
Division 8	
Subheads. to s. 59(1), (2)	am. No. 107, 2009
Subhead. to s. 59(4)	am. No. 107, 2009
s. 59	am. No. 107, 2009

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Endnote 4—Amendment history

Provision affected	How affected
Heading to s. 60	am. No. 107, 2009
Subheads. to s. 60(1), (2)	am. No. 107, 2009
Subhead. to s. 60(4)	am. No. 107, 2009
s. 60	am. No. 107, 2009
Heading to s. 61	am. No. 107, 2009
Subhead. to s. 61(1)	am. No. 107, 2009
Subheads. to s. 61(5), (6)	am. No. 107, 2009
Subhead. to s. 61(9)	am. No. 107, 2009
ss. 61, 62	am. No. 107, 2009
Note to s. 62(1), (2)	rep. No. 127, 2003
Division 10	
s. 65	am. No. 107, 2009
Division 11	
Div. 11 of Part 3	ad. No. 107, 2009
Subdivision A	
ss. 65A–65D	ad. No. 107, 2009
Subdivision B	
ss. 65E–65H	ad. No. 107, 2009
s. 65J	ad. No. 107, 2009
Subdivision C	
s. 65K	ad. No. 107, 2009
Division 12	
Div. 12 of Part 3	ad. No. 107, 2009
ss. 65L–65N	ad. No. 107, 2009
ss. 65P–65S	ad. No. 107, 2009
Division 13	
Div. 13 of Part 3	ad. No. 107, 2009
ss. 65T, 65U	ad. No. 107, 2009
Part 4	
Heading to s. 66	rs. No. 107, 2009
s. 66	am. No. 127, 2003; No. 107, 2009

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Endnote 4—Amendment history

Provision affected	How affected
Note to s. 66(1)	rep. No. 127, 2003
s. 66A	ad. No. 107, 2009
s. 67	am. No. 127, 2003; No. 107, 2009
Note to s. 67(5)	rep. No. 127, 2003
Part 5	
s 67A	ad No 42, 2004
	rs No 107, 2009
	am No 66, 2021
s. 68	am. No. 127, 2003; No. 107, 2009
s. 70	am. No. 118, 2001; No. 107, 2009

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