



Tobacco Plain Packaging Act 2011

No. 148, 2011

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About this compilation

This compilation

This is a compilation of the *Tobacco Plain Packaging Act 2011* that shows the text of the law as amended and in force on 26 September 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 discourage the use of tobacco products, and for related purposes

Chapter 1—Preliminary

Part 1—Preliminary

1 Short title

This Act may be cited as the *Tobacco Plain Packaging Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 16 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 December 2011
2. Sections 17 to 27A	1 October 2012.	1 October 2012
3. Sections 28 and 29	The day this Act receives the Royal Assent.	1 December 2011
4. Sections 30 to 32	1 December 2012.	1 December 2012

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Sections 33 to 36	1 October 2012.	1 October 2012
6. Sections 37 and 38	1 December 2012.	1 December 2012
7. Section 39	1 October 2012.	1 October 2012
8. Sections 40 and 41	1 December 2012.	1 December 2012
9. Sections 42 to 46	1 October 2012.	1 October 2012
10. Sections 47 and 48	1 December 2012.	1 December 2012
11. Sections 49 to 80	1 October 2012.	1 October 2012
12. Sections 81 and 82	The day this Act receives the Royal Assent.	1 December 2011
13. Sections 83 to 105	1 October 2012.	1 October 2012
14. Sections 106 to 109	The day this Act receives the Royal Assent.	1 December 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

- (1) The objects of this Act are:
(a) to improve public health by:

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- (i) discouraging people from taking up smoking, or using tobacco products; and
 - (ii) encouraging people to give up smoking, and to stop using tobacco products; and
 - (iii) discouraging people who have given up smoking, or who have stopped using tobacco products, from relapsing; and
 - (iv) reducing people's exposure to smoke from tobacco products; and
 - (b) to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control.
- (2) It is the intention of the Parliament to contribute to achieving the objects in subsection (1) by regulating the retail packaging and appearance of tobacco products in order to:
- (a) reduce the appeal of tobacco products to consumers; and
 - (b) increase the effectiveness of health warnings on the retail packaging of tobacco products; and
 - (c) reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

4 Definitions

- (1) In this Act:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

Australia includes all the external Territories.

authorised officer means a person appointed under section 81 as an authorised officer.

cigarette means a roll of cut tobacco for smoking, enclosed in paper.

cigarette carton means any container for retail sale that contains smaller containers in which cigarettes are directly placed.

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Note: See also the definition of *container*.

cigarette pack means any container for retail sale in which cigarettes are directly placed.

Note: See also the definition of *container*.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

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

constitutional trade or commerce means:

- (a) trade or commerce between Australia and places outside Australia; or
- (b) trade or commerce among the States; or
- (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

container includes (without limitation) any pack, carton, box, tin, packet, bag, pouch, tube or other container.

Convention on Tobacco Control means the WHO Framework Convention on Tobacco Control, done at Geneva on 21 May 2003.

Note: The text of the Convention is set out in Australian Treaty Series 2005 No. 7 ([2005] ATS 7). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

filter tip of a cigarette means the part of the end of the cigarette that acts as a filter, or purports to act as a filter.

fire risk statement means any statement that is required to appear on the retail packaging of tobacco products by:

- (a) regulation 14 of the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*; or
- (b) a safety standard made under section 104, or declared under section 105, of Schedule 2 to the *Competition and Consumer Act 2010*, to the extent that the standard relates to fire risk; or

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- (c) an information standard made under section 134, or declared under section 135, of Schedule 2 to the *Competition and Consumer Act 2010*, to the extent that the standard relates to fire risk.

health warning means any message, information, graphic or other thing that is required to appear on the retail packaging of tobacco products by:

- (a) the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*; or
- (b) a safety standard made under section 104, or declared under section 105, of Schedule 2 to the *Competition and Consumer Act 2010*, to the extent that the standard relates to the health effects of smoking or using tobacco products; or
- (c) an information standard made under section 134, or declared under section 135, of Schedule 2 to the *Competition and Consumer Act 2010*, to the extent that the standard relates to the health effects of smoking or using tobacco products.

imitation cork tip of a cigarette means the part of the paper over the filter tip of the cigarette that is printed brown to resemble cork.

inner surface of a cigarette carton has a meaning affected by subsection 6(2).

insert means any thing (other than a tobacco product) placed inside packaging (within the ordinary meaning of the word), but does not include the lining of a cigarette pack if the lining complies with the requirements of this Act.

inside lip of a cigarette pack means the part of the outer surfaces of the pack that is obscured when the flip-top lid is closed.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

mark:

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- (a) includes (without limitation) any line, letters, numbers, symbol, graphic or image; but
- (b) (other than when referring to a trade mark) does not include a trade mark.

measurement mark means any information that is required to appear on the retail packaging of tobacco products by regulations made under the *National Measurement Act 1960*.

offer a tobacco product for sale has a meaning affected by subsection (2) of this section.

onsert means any thing affixed or otherwise attached to packaging (within the ordinary meaning of the word), but does not include the lining of a cigarette pack if the lining complies with the requirements of this Act.

Note: A sound chip embedded in the cardboard of a cigarette pack is an example of an onsert.

outer surface of a cigarette pack has a meaning affected by subsection 6(1).

package a tobacco product for retail sale has the meaning given by section 5.

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

relevant legislative requirement means any of the following:

- (a) a health warning;
- (b) a fire risk statement;
- (c) a trade description;
- (d) a measurement mark.

relevant tobacco law has the meaning given by section 11.

retail packaging of a tobacco product means:

- (a) any container for retail sale in which the tobacco product is directly placed; or

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- (b) any container for retail sale that contains a smaller container in which the tobacco product is directly placed; or
- (c) any plastic or other wrapper that covers any retail packaging of the tobacco product (within the meaning of paragraph (a) or (b) of this definition); or
- (d) any plastic or other wrapper that covers the tobacco product, being a tobacco product that is for retail sale; or
- (e) any insert that is placed inside the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of this definition); or
- (f) any onsert that is affixed or otherwise attached to the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of this definition).

Note: See also the definition of *container*.

Secretary means the Secretary of the Department.

sign (when used as a noun) has the meaning given by subsection 6(1) of the *Trade Marks Act 1995*.

this Act includes the regulations.

tobacco advertising and promotion has the meaning given by the Convention on Tobacco Control.

tobacco product means processed tobacco, or any product that contains tobacco, that:

- (a) is manufactured to be used for smoking, sucking, chewing or snuffing; and
- (b) is not included in the Australian Register of Therapeutic Goods maintained under the *Therapeutic Goods Act 1989*.

Note: Loose tobacco for roll-your-own cigarettes is an example of processed tobacco. A cigar or cigarette is an example of a product that contains tobacco.

tobacco product requirement means the following requirements in relation to the retail packaging or appearance of tobacco products:

- (a) a requirement specified in Part 2 of Chapter 2;

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- (b) a requirement prescribed by regulations made under Part 2 of Chapter 2;
- (c) if subsection 15(2) applies (acquisition of property)—a requirement prescribed by regulations made under section 15.

trade description means any trade description that is required to appear on the retail packaging of tobacco products by regulations made under the *Commerce (Trade Descriptions) Act 1905*.

variant name for a tobacco product means the name used to distinguish that kind of tobacco product from other tobacco products that are supplied under the same brand, business or company name, by reference to one or more of the following:

- (a) containing or not containing menthol;
 - (b) being otherwise differently flavoured;
 - (c) purporting to differ in strength;
 - (d) having or not having filter tips or imitation cork tips;
 - (e) being of different length or mass.
- (2) In this Act, a reference to offering a tobacco product for sale includes (without limitation) a reference to:
- (a) exposing, displaying or advertising the product for sale; and
 - (b) making the product available for sale even if the product is not visible to the public.

5 Definition of *package* a tobacco product for retail sale

A person ***packages*** a tobacco product for retail sale if:

- (a) the person places the tobacco product directly into a container for retail sale; or
- (b) the person places a container, in which the tobacco product has been directly placed, into a larger container for retail sale; or
- (c) the person covers the retail packaging of the tobacco product (within the meaning of paragraph (a) or (b) of the definition of ***retail packaging***) with a plastic or other wrapper; or

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- (d) the person covers the tobacco product, being a tobacco product that is for retail sale, with a plastic or other wrapper; or
- (e) the person places an insert inside the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of the definition of *retail packaging*); or
- (f) the person affixes or otherwise attaches an insert to the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of the definition of *retail packaging*).

Note 1: See also the definition of *container*.

Note 2: Other grammatical forms of the word *package* (such as packaged) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

6 Rules relating to surfaces of cigarette packs and cigarette cartons

Surfaces of cigarette packs

- (1) A reference in this Act to an outer surface of a cigarette pack (such as the front outer surface) is a reference to all of that outer surface, including the part of that outer surface that forms part of the flip-top lid.

Surfaces of cigarette cartons

- (2) If a cigarette carton has one or more flaps with surfaces that become visible only when the carton is opened, those surfaces are taken to be inner surfaces of the carton.

7 References to contraventions of civil penalty provisions

For the purposes of this Act, if:

- (a) a provision of this Act refers to:
 - (i) a contravention of a civil penalty provision; or
 - (ii) a person contravening a civil penalty provision; and
- (b) the civil penalty provision is in a section in Chapter 3;

Section 8

the reference includes a reference to a contravention of, or a person contravening, subsection (1) of that section.

8 Act extends to external Territories

This Act extends to all the external Territories.

9 Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

10 Inconsistency with other Commonwealth legislation

The following prevail to the extent of any inconsistency with this Act:

- (a) the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*;
- (b) a safety standard made under section 104, or declared under section 105, of Schedule 2 to the *Competition and Consumer Act 2010*, to the extent that the standard relates to the health effects of smoking or using tobacco products;
- (c) an information standard made under section 134, or declared under section 135, of Schedule 2 to the *Competition and Consumer Act 2010*, to the extent that the standard relates to the health effects of smoking or using tobacco products.

11 Operation of State and Territory laws

- (1) This Act does not exclude or limit the operation of a relevant tobacco law of a State or Territory that is capable of operating concurrently with this Act.

Section 11

- (2) This Act does not exclude or limit the application of a relevant tobacco law of a State or Territory to particular conduct if:
- (a) that conduct constitutes an offence against, or a contravention of a civil penalty provision in, this Act; and
 - (b) that conduct also constitutes an offence against, or a contravention of a civil penalty provision (however described) in, the relevant tobacco law.

- (3) In this Act:

relevant tobacco law means a law, or a provision of a law, that regulates the retail packaging or appearance of tobacco products.

Section 12

Part 2—Simplified outlines

12 Simplified outline for this Act

The following is a simplified outline of this Act:

- This Act regulates the retail packaging and appearance of tobacco products in order to:
 - (a) improve public health; and
 - (b) give effect to certain obligations in the Convention on Tobacco Control.
- Part 2 of Chapter 2 specifies requirements for the retail packaging and appearance of tobacco products. (If there is an acquisition of property otherwise than on just terms, regulations made under section 15 might also specify requirements.)
- The retail packaging and appearance of tobacco products must comply with the requirements of this Act.
- Offences and civil penalties apply if tobacco products are supplied, purchased or manufactured and either the retail packaging, or the products themselves, do not comply with the requirements.

13 Simplified outline for this Chapter

The following is a simplified outline of this Chapter:

- Part 1 of this Chapter contains definitions and general rules about the operation of this Act.

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- Part 3 of this Chapter contains provisions relating to the constitutional basis of this Act.
- This Act relies on the external affairs power of the Constitution by implementing certain obligations in the Convention on Tobacco Control. However, if this Act is not supported by that power, then this Act will apply in more limited circumstances by relying on the corporations power, the trade and commerce power and the Territories power.
- This Act does not apply to the extent that its operation would infringe certain constitutional protections (such as by acquiring property otherwise than on just terms).

Section 14

Part 3—Constitutional provisions

14 Additional operation of this Act

- (1) Without prejudice to its effect apart from this section, this Act also has effect as provided by this section.

Corporations power

- (2) Part 2 of Chapter 3 has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person that is a constitutional corporation.

Note: Part 2 of Chapter 3 contains general offences and civil penalty provisions for non-compliant retail packaging and tobacco products.

Trade and commerce power

- (3) Part 2 of Chapter 3 has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place in the course of, or in relation to, constitutional trade or commerce.

- (4) Subsection (3) does not apply to the extent (if any) that its application would infringe section 92 of the Constitution.

Note: Section 92 of the Constitution requires trade among the States to be absolutely free.

Territories power

- (5) Part 2 of Chapter 3 has, by force of this subsection, the effect it would have if its operation were, by express provision, confined to a person engaging in conduct to the extent to which the conduct takes place wholly or partly in a Territory.

15 Acquisition of property

- (1) This Act does not apply to the extent (if any) that its operation would result in an acquisition of property from a person otherwise than on just terms.
- (2) In particular, if, apart from this section, this Act would result in such an acquisition of property because it would prevent the use of a trade mark or other sign on or in relation to the retail packaging of tobacco products, or on tobacco products, then despite any other provision of this Act, the trade mark or sign may be used on or in relation to the retail packaging of tobacco products, or on tobacco products, subject to any requirements that may be prescribed in the regulations for the purposes of this subsection.

Note: Offences and civil penalties apply to the supply, purchase and manufacture etc. of tobacco products that do not comply with any requirements specified in the regulations (see Chapter 3).

- (3) To avoid doubt, any tobacco product requirement (within the meaning of paragraph (a) or (b) of the definition of ***tobacco product requirement***) that does not result in such an acquisition of property continues to apply in relation to:
 - (a) the retail packaging of tobacco products; and
 - (b) the appearance of tobacco products.

16 Implied freedom of political communication

This Act does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

Section 17

Chapter 2—Requirements for plain packaging and appearance of tobacco products

Part 1—Simplified outline

17 Simplified outline

The following is a simplified outline of this Chapter:

- Part 2 of this Chapter specifies requirements for the retail packaging and appearance of tobacco products.
- Offences and civil penalties in Chapter 3 apply in certain circumstances if retail packaging or tobacco products do not comply with the requirements.
- Division 1 of Part 2 sets out requirements for:
 - (a) the physical features of retail packaging; and
 - (b) the colour and finish of retail packaging; and
 - (c) marks on retail packaging (including a prohibition on trade marks generally appearing on retail packaging); and
 - (d) wrappers; and
 - (e) retail packaging after retail sale.
- Division 2 of Part 2 also prohibits trade marks from generally appearing on the tobacco products themselves.

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- Division 3 of Part 2 allows additional regulations to be made in relation to the retail packaging and appearance of tobacco products. That Division also sets out the relationship between this Act, the *Trade Marks Act 1995* and the *Designs Act 2003*.

Part 2—Requirements for retail packaging and appearance of tobacco products

Division 1—Requirements for retail packaging of tobacco products

18 Physical features of retail packaging

Retail packaging of all tobacco products

- (1) The retail packaging of tobacco products must comply with the following requirements:
 - (a) the outer surfaces and inner surfaces of the packaging must not have any decorative ridges, embossing, bulges or other irregularities of shape or texture, or any other embellishments, other than as permitted by the regulations;
 - (b) any glues or other adhesives used in manufacturing the packaging must be transparent and not coloured.

Cigarette packs and cigarette cartons

- (2) A cigarette pack or cigarette carton must comply with the following requirements:
 - (a) the pack or carton must be rigid and made of cardboard, and only cardboard (subject to paragraphs (1)(b) and (3)(d));
 - (b) when the pack or carton is closed:
 - (i) each outer surface of the pack or carton must be rectangular; and
 - (ii) the surfaces of the pack or carton must meet at firm 90 degree angles;
 - (c) all edges of the pack or carton must be rigid, straight and not rounded, bevelled or otherwise shaped or embellished in any way, other than as permitted by the regulations.
- (3) A cigarette pack must comply with the following requirements:

- (a) the dimensions of the pack must comply with the requirements prescribed by the regulations;
- (b) the only opening to the pack must be a flip-top lid which must:
 - (i) be hinged only at the back of the pack; and
 - (ii) have straight edges;and neither the lid, nor the edges of the lid, may be rounded, bevelled or otherwise shaped or embellished in any way;
- (c) the inside lip of the cigarette pack must have straight edges, other than corners which may be rounded, and neither the lip, nor the edges of the lip, may be bevelled or otherwise shaped or embellished in any way;
- (d) if the pack contains lining—the lining of the pack must be made only of foil backed with paper, or any other material prescribed by the regulations.

19 Colour and finish of retail packaging

- (1) This section applies to the following things:
 - (a) all outer surfaces and inner surfaces of the retail packaging of tobacco products (within the meaning of paragraph (a) or (b) of the definition of *retail packaging*);
 - (b) both sides of any lining of a cigarette pack.

Note: For the requirements for wrappers, inserts and onserts, see sections 22 and 23.

- (2) The things mentioned in subsection (1):
 - (a) must have a matt finish; and
 - (b) except as provided by subsection (3):
 - (i) if regulations are in force prescribing a colour—must be that colour; and
 - (ii) otherwise—must be drab dark brown.
- (3) The following are not required to be the colour mentioned in paragraph (2)(b):
 - (a) the health warnings;

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(b) the text of:

- (i) the brand, business or company name, or variant name (if any), for the tobacco products; and
- (ii) the relevant legislative requirements (other than the health warnings).

Note: The regulations might require the brand, business, company or variant name, or a relevant legislative requirement, to be a particular colour.

20 Prohibition on trade marks and marks generally appearing on retail packaging

No trade marks

- (1) No trade mark may appear anywhere on the retail packaging of tobacco products, other than as permitted by subsection (3).

Note: This section does not apply to wrappers (see subsection (4)).

No marks

- (2) No mark may appear anywhere on the retail packaging of tobacco products, other than as permitted by subsection (3).

Note: For the definition of **mark**, see section 4.

Permitted trade marks and marks

- (3) The following may appear on the retail packaging of tobacco products:

- (a) the brand, business or company name for the tobacco products, and any variant name for the tobacco products;
- (b) the relevant legislative requirements;
- (c) any other trade mark or mark permitted by the regulations.

Note: For requirements for brand, business, company or variant names, and relevant legislative requirements, see section 21.

Section not to apply to wrappers

- (4) This section does not apply to a plastic or other wrapper that covers:
- (a) the retail packaging of tobacco products; or
 - (b) a tobacco product that is for retail sale.

Note: For the requirements for wrappers, see section 22.

21 Requirements for brand, business, company or variant names, and relevant legislative requirements

Requirements for brand, business, company or variant name—general

- (1) Any brand, business or company name, or any variant name, for tobacco products that appears on the retail packaging of those products must comply with any requirements prescribed by the regulations.

Note: This section does not apply to wrappers (see subsection (5)).

Requirements for brand, business, company or variant name—cigarette packs and cigarette cartons

- (2) Any brand, business or company name, or any variant name, for cigarettes that appears on a cigarette pack or cigarette carton:
- (a) must not obscure any relevant legislative requirement; and
 - (b) must not appear more than once on any of the following outer surfaces of the pack or carton:
 - (i) for a cigarette pack—the front, top and bottom outer surfaces of the pack;
 - (ii) for a cigarette carton—the front outer surface of the carton, and the 2 smallest outer surfaces of the carton; and
 - (c) may appear only on the surfaces mentioned in paragraph (b); and
 - (d) must appear across one line only; and

Chapter 2 Requirements for plain packaging and appearance of tobacco products

Part 2 Requirements for retail packaging and appearance of tobacco products

Division 1 Requirements for retail packaging of tobacco products

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(e) must comply with the requirements in the table in subsection (3).

(3) The following table has effect:

Requirements for brand, business, company or variant names			
Item	If this name ...	appears on this surface ...	the name ...
1	a brand, business or company name	the front outer surface of a cigarette pack	must appear: (a) horizontally below, and in the same orientation as, the health warning; and (b) in the centre of the space remaining on the front outer surface beneath the health warning.
2	a brand, business or company name	the front outer surface of a cigarette carton	must appear: (a) in the same orientation as the health warning; and (b) in the centre of the space on the front outer surface that is not occupied by the health warning.
3	a brand, business or company name	any outer surface of a cigarette pack or cigarette carton (other than a front outer surface)	must appear: (a) horizontally; and (b) in the centre of the outer surface of the pack or carton.
4	variant name	any outer surface of a cigarette pack or cigarette carton	must appear: (a) horizontally and immediately below the brand, business or company name; and (b) in the same orientation as the brand, business or company name.

Requirements for relevant legislative requirements (other than health warnings)

- (4) Any relevant legislative requirement (other than the health warnings) must comply with any requirements prescribed by the regulations.

Section not to apply to wrappers

- (5) This section does not apply to a plastic or other wrapper that covers:
- (a) the retail packaging of tobacco products; or
 - (b) a tobacco product that is for retail sale.

Note: For the requirements for wrappers, see section 22.

22 Requirements for wrappers

- (1) This section sets out the requirements that a plastic or other wrapper must comply with if the wrapper covers:
- (a) the retail packaging of tobacco products (within the meaning of paragraph (a) or (b) of the definition of **retail packaging**); or
 - (b) a tobacco product that is for retail sale.
- (2) For the purposes of subsection (1), the wrapper must comply with the following requirements:
- (a) the wrapper must be transparent and not coloured, marked, textured or embellished in any way, other than as permitted by the regulations;
 - (b) no trade mark may appear anywhere on the wrapper, other than as permitted by the regulations;
 - (c) no mark may appear anywhere on the wrapper, other than as permitted by the regulations.

23 Retail packaging not to have inserts or onserts

The retail packaging of tobacco products (within the meaning of any of paragraphs (a) to (d) of the definition of **retail packaging**)

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must not have any inserts or onserts, other than as permitted by the regulations.

24 Retail packaging not to produce noise or scent

No part of the retail packaging of tobacco products may make a noise, or contain or produce a scent, that could be taken to constitute tobacco advertising and promotion.

Note: For the definition of *tobacco advertising and promotion*, see section 4.

25 Retail packaging must not change after retail sale

The retail packaging of tobacco products must not include any features designed to change the packaging after retail sale, including (without limitation) the following:

- (a) heat activated inks;
- (b) inks or embellishments designed to appear gradually over time;
- (c) inks that appear fluorescent in certain light;
- (d) panels designed to be scratched or rubbed to reveal an image or text;
- (e) removable tabs;
- (f) fold-out panels.

Division 2—Requirements for appearance of tobacco products

26 Requirements for appearance of tobacco products

- (1) No trade mark may appear anywhere on a tobacco product, other than as permitted by the regulations.
- (2) No mark may appear anywhere on a tobacco product, other than as permitted by the regulations.

Note: For the definition of *mark*, see section 4.

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Division 3—Miscellaneous

27 Regulations may prescribe additional requirements

- (1) To further the objects of this Act, the regulations may prescribe additional requirements in relation to:
- (a) the retail packaging of tobacco products; and
 - (b) the appearance of tobacco products.

Note 1: The objects of this Act are set out in section 3.

Note 2: Offences and civil penalties apply to the supply, purchase and manufacture etc. of tobacco products that do not comply with the requirements (see Chapter 3).

- (2) Divisions 1 and 2 of this Part do not limit subsection (1).

27A Legal effect of sections 18 to 27

Sections 18 to 27 have no legal effect other than to specify requirements, and provide for regulations specifying requirements, for the purposes of the definition of ***tobacco product requirement*** in subsection 4(1).

Note: Chapters 3 and 5 contain the offences and civil penalty provisions for failing to comply with a tobacco product requirement.

28 Effect on the *Trade Marks Act 1995* of non-use of trade mark as a result of this Act

- (1) For the purposes of the *Trade Marks Act 1995*, and regulations made under that Act, an applicant for the registration of a trade mark in respect of tobacco products is taken to intend to:
- (a) use the trade mark in Australia in relation to those products; or
 - (b) authorise another person to use the trade mark in Australia in relation to those products; or

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- (c) assign the trade mark to a body corporate that is about to be constituted with a view to the body corporate using the trade mark in Australia in relation to those products;
if the applicant would intend to do so but for the operation of this Act.
- (2) To avoid doubt, for the purposes of paragraph 42(b) of the *Trade Marks Act 1995*, this Act does not have the effect that the use of a trade mark in relation to tobacco products would be contrary to law.
- (3) To avoid doubt, for the purposes of sections 38 and 84A of the *Trade Marks Act 1995*, and regulations 17A.27 and 17A.42A of the *Trade Marks Regulations 1995*:
 - (a) the operation of this Act; or
 - (b) the circumstance that a person is prevented, by or under this Act, from using a trade mark on or in relation to the retail packaging of tobacco products, or on tobacco products;
are not circumstances that make it reasonable or appropriate:
 - (c) not to register the trade mark; or
 - (d) to revoke the acceptance of an application for registration of the trade mark; or
 - (e) to register the trade mark subject to conditions or limitations;
or
 - (f) to revoke the registration of the trade mark.
- (4) For the purposes of paragraph 100(1)(c) of the *Trade Marks Act 1995*, an opponent is taken to have rebutted an allegation if the opponent establishes that the registered owner would have used the trade mark in Australia on or in relation to the retail packaging of tobacco products, or on tobacco products, but for the operation of this Act.

Trade Marks regulations applying provisions of Trade Marks Act

- (5) Subsections (1) to (4) also apply in relation to regulations made under the *Trade Marks Act 1995* that:

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- (a) apply provisions of the *Trade Marks Act 1995* that are affected by this section, including where the regulations apply those provisions in modified form; and
- (b) provide in similar terms to provisions of the *Trade Marks Act 1995* that are affected by this section.

29 Effect on the *Designs Act 2003* of failure to make products as a result of this Act

A failure to make a product that embodies a registered design merely as a result of complying with the requirements of this Act does not provide the basis for making an order:

- (a) under section 90 of the *Designs Act 2003*, requiring the grant of a licence in relation to the design; nor
- (b) under section 92 of that Act, revoking the registration of the design.

Chapter 3—Offences and civil penalty provisions

Part 1—Simplified outline

30 Simplified outline

The following is a simplified outline of this Chapter:

- A person must not:
 - (a) supply or purchase tobacco products in retail packaging that does not comply with the requirements of this Act; nor
 - (b) be involved in the packaging of tobacco products for retail sale if the packaging does not comply with those requirements; nor
 - (c) supply, purchase or manufacture tobacco products that do not comply with those requirements; nor
 - (d) supply tobacco products that are not packaged for retail sale without certain contractual prohibitions.
- A person who does so:
 - (a) may commit a fault-based offence (that is, an offence where fault elements apply to the physical elements of the offence); and
 - (b) may also commit a strict liability offence (that is, an offence where no fault elements apply to the physical elements of the offence); and
 - (c) may also contravene a civil penalty provision.

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- It is up to the Commonwealth to decide whether to prosecute a person for one of the offences or bring proceedings in relation to the contravention of the civil penalty provision. (Division 3 of Part 4 of the Regulatory Powers Act has rules about bringing civil proceedings and criminal proceedings.)
- Part 3 of this Chapter contains specific offences and civil penalty provisions in relation to constitutional corporations (for example, supplying non-compliant tobacco products to constitutional corporations).
- Part 4 of this Chapter creates an exception to some of the offences and civil penalty provisions in this Chapter for non-compliant tobacco products that are for export. That Part also clarifies what the physical elements of offences are in this Chapter.

Part 2—General offences and civil penalty provisions for non-compliant retail packaging and tobacco products

Division 1—Non-compliant retail packaging of tobacco products

31 Selling or supplying tobacco products in non-compliant retail packaging

- (1) A person contravenes this subsection if:
- (a) the person:
 - (i) sells a tobacco product; or
 - (ii) offers a tobacco product for sale; or
 - (iii) otherwise supplies (whether or not for consideration) a tobacco product; and
 - (b) at the time the product is sold, offered for sale, or otherwise supplied, the product has been packaged for retail sale; and
 - (c) the retail packaging does not comply with a tobacco product requirement.

Note 1: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Note 2: See subsection 4(2) for an extended meaning of *offer*.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

Chapter 3 Offences and civil penalty provisions

Part 2 General offences and civil penalty provisions for non-compliant retail packaging and tobacco products

Division 1 Non-compliant retail packaging of tobacco products

Section 32

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

32 Purchasing tobacco products in non-compliant retail packaging

- (1) A person contravenes this subsection if:
- (a) the person purchases a tobacco product; and
 - (b) at the time the product is purchased, the product has been packaged for retail sale; and
 - (c) the retail packaging does not comply with a tobacco product requirement.
- (2) Subsection (1) does not apply to an individual who purchases the tobacco product for his or her personal use.

Note: There is another exception to subsection (1) in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note 1: See section 50 in relation to the physical elements of the offence.

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

- (4) For the purposes of subsection (3), strict liability applies to paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

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

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

33 Packaging tobacco products in non-compliant retail packaging

- (1) A person contravenes this subsection if:
-

Chapter 3 Offences and civil penalty provisions

Part 2 General offences and civil penalty provisions for non-compliant retail packaging and tobacco products

Division 1 Non-compliant retail packaging of tobacco products

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- (a) the person packages a tobacco product for retail sale; and
- (b) the retail packaging does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to the element of the offence that the tobacco product is packaged for retail sale.

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

34 Manufacturing non-compliant retail packaging of tobacco products

- (1) A person contravenes this subsection if:
- (a) the person manufactures any of the following retail packaging of tobacco products:
 - (i) a container for retail sale;
 - (ii) a container for retail sale that contains or will contain smaller containers;
 - (iii) a plastic or other wrapper that covers or will cover a container or containers for retail sale;
 - (iv) a plastic or other wrapper that covers or will cover a tobacco product that is for retail sale; and
 - (b) a tobacco product is packaged for retail sale in the retail packaging by another person; and
 - (c) the retail packaging does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to the element of the offence that the packaging is retail packaging.

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Chapter 3 Offences and civil penalty provisions

Part 2 General offences and civil penalty provisions for non-compliant retail packaging and tobacco products

Division 1 Non-compliant retail packaging of tobacco products

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Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

35 Manufacturing tobacco products that are packaged in non-compliant retail packaging

- (1) A person contravenes this subsection if:
- (a) the person (the **manufacturer**) manufactures a tobacco product; and
 - (b) the manufacturer enters into a contract or arrangement, or arrives at an understanding, for another person to package the tobacco product for retail sale; and
 - (c) the tobacco product is packaged for retail sale by the other person; and
 - (d) the retail packaging does not comply with a tobacco product requirement.
- (2) Subsection (1) does not apply if the manufacturer took all reasonable steps to ensure that the retail packaging complied with the tobacco product requirements.

Note: There is another exception to subsection (1) in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note 1: See section 50 in relation to the physical elements of the offence.

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

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

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

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

36 Certain supplies of tobacco products that have not been packaged for retail sale

- (1) A person contravenes this subsection if:
- (a) the person:
 - (i) sells a tobacco product; or
 - (ii) otherwise supplies (whether or not for consideration) a tobacco product;
to another person (the *purchaser*); and
 - (b) the product is not packaged for retail sale; and

Chapter 3 Offences and civil penalty provisions

Part 2 General offences and civil penalty provisions for non-compliant retail packaging and tobacco products

Division 1 Non-compliant retail packaging of tobacco products

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- (c) at the time of the supply, the person does not have a contract with the purchaser that prohibits the purchaser from supplying the product in Australia in retail packaging that does not comply with the tobacco product requirements.
- (2) To avoid doubt, the contract may allow the purchaser to supply the tobacco product without having packaged the product for retail sale.

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (4) For the purposes of subsection (3), strict liability applies to paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant retail packaging and
tobacco products **Part 2**
Non-compliant retail packaging of tobacco products **Division 1**

Section 36

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Division 2—Non-compliant tobacco products

37 Selling or supplying non-compliant tobacco products

- (1) A person contravenes this subsection if:
- (a) the person:
 - (i) sells a tobacco product; or
 - (ii) offers a tobacco product for sale; or
 - (iii) otherwise supplies (whether or not for consideration) a tobacco product; and
 - (b) the product does not comply with a tobacco product requirement.

Note 1: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Note 2: See subsection 4(2) for an extended meaning of *offer*.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

38 Purchasing non-compliant tobacco products

- (1) A person contravenes this subsection if:
- (a) the person purchases a tobacco product; and
 - (b) the product does not comply with a tobacco product requirement.
- (2) Subsection (1) does not apply to an individual who purchases the tobacco product for his or her personal use.

Note: There is another exception to subsection (1) in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note 1: See section 50 in relation to the physical elements of the offence.

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

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Chapter 3 Offences and civil penalty provisions

Part 2 General offences and civil penalty provisions for non-compliant retail packaging and tobacco products

Division 2 Non-compliant tobacco products

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Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

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

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

39 Manufacturing non-compliant tobacco products

- (1) A person contravenes this subsection if:
- (a) the person manufactures a tobacco product; and
 - (b) the product does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

Strict liability offence

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Part 3—Offences and civil penalty provisions relating to constitutional corporations

Division 1—Non-compliant retail packaging of tobacco products

40 Selling or supplying tobacco products to a constitutional corporation in non-compliant retail packaging

- (1) A person contravenes this subsection if:
- (a) the person:
 - (i) sells a tobacco product; or
 - (ii) offers a tobacco product for sale; or
 - (iii) otherwise supplies (whether or not for consideration) a tobacco product;
to another person; and
 - (b) that other person is a constitutional corporation; and
 - (c) at the time the product is sold, offered for sale, or otherwise supplied, the product has been packaged for retail sale; and
 - (d) the retail packaging does not comply with a tobacco product requirement.

Note 1: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Note 2: See subsection 4(2) for an extended meaning of *offer*.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to paragraphs (1)(b) and (c).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

41 Purchasing tobacco products from a constitutional corporation in non-compliant retail packaging

- (1) A person contravenes this subsection if:
- (a) the person purchases a tobacco product from another person; and
 - (b) the other person is a constitutional corporation; and
 - (c) at the time the product is purchased, the product has been packaged for retail sale; and
 - (d) the retail packaging does not comply with a tobacco product requirement.
- (2) Subsection (1) does not apply to an individual who purchases the tobacco product for his or her personal use.

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant retail packaging of tobacco products

Section 41

Note: There is another exception to subsection (1) in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note 1: See section 50 in relation to the physical elements of the offence.

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

- (4) For the purposes of subsection (3), strict liability applies to paragraphs (1)(b) and (c).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

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

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

42 Packaging tobacco products in non-compliant retail packaging under a contract with a constitutional corporation

- (1) A person contravenes this subsection if:
- (a) the person packages a tobacco product for retail sale; and
 - (b) the product is packaged under a contract with a constitutional corporation; and
 - (c) the retail packaging does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to:
- (a) the element of the offence that the tobacco product is packaged for retail sale; and
 - (b) paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

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Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

43 Manufacturing non-compliant retail packaging of tobacco products under a contract with a constitutional corporation

- (1) A person contravenes this subsection if:
- (a) the person (the ***manufacturer***) manufactures any of the following retail packaging of tobacco products:
 - (i) a container for retail sale;
 - (ii) a container for retail sale that contains or will contain smaller containers;
 - (iii) a plastic or other wrapper that covers or will cover a container or containers for retail sale;
 - (iv) a plastic or other wrapper that covers or will cover a tobacco product that is for retail sale; and
 - (b) the retail packaging is manufactured under a contract with a constitutional corporation; and
 - (c) a tobacco product is packaged for retail sale in the retail packaging by a person other than the manufacturer; and
 - (d) the retail packaging does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to:
- (a) the element of the offence that the packaging is retail packaging; and
 - (b) paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

44 Packaging tobacco products in non-compliant retail packaging bearing identifying mark of a constitutional corporation

- (1) A person contravenes this subsection if:
- (a) the person packages a tobacco product for retail sale; and
 - (b) the trade mark, brand, business or company name, or other identifying mark, of a constitutional corporation appears on the retail packaging; and

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Division 1 Non-compliant retail packaging of tobacco products

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- (c) the retail packaging does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to:
- (a) the element of the offence that the tobacco product is packaged for retail sale; and
 - (b) paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

45 Manufacturing non-compliant retail packaging of tobacco products that bears identifying mark of a constitutional corporation

- (1) A person contravenes this subsection if:
- (a) the person (the *manufacturer*) manufactures any of the following retail packaging of tobacco products:
 - (i) a container for retail sale;
 - (ii) a container for retail sale that contains or will contain smaller containers;
 - (iii) a plastic or other wrapper that covers or will cover a container or containers for retail sale;
 - (iv) a plastic or other wrapper that covers or will cover a tobacco product that is for retail sale; and
 - (b) the trade mark, brand, business or company name, or other identifying mark, of a constitutional corporation appears on the retail packaging; and
 - (c) a tobacco product is packaged for retail sale in the retail packaging by a person other than the manufacturer; and
 - (d) the retail packaging does not comply with a tobacco product requirement.

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to:
- (a) the element of the offence that the packaging is retail packaging; and
 - (b) paragraph (1)(b).

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Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

46 Certain supplies, by or to a constitutional corporation, of tobacco products that have not been packaged for retail sale

- (1) A person contravenes this subsection if:
- (a) the person:
 - (i) sells a tobacco product; or
 - (ii) otherwise supplies (whether or not for consideration) a tobacco product;
to another person (the *purchaser*); and
 - (b) either the person or the purchaser is a constitutional corporation; and
 - (c) the product is not packaged for retail sale; and
 - (d) at the time of the supply, the person does not have a contract with the purchaser that prohibits the purchaser from supplying the product in Australia in retail packaging that does not comply with the tobacco product requirements.

- (2) To avoid doubt, the contract may allow the purchaser to supply the tobacco product without having packaged the product for retail sale.

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (4) For the purposes of subsection (3), strict liability applies to paragraphs (1)(b) and (c).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Division 2—Non-compliant tobacco products

47 Selling or supplying non-compliant tobacco products to a constitutional corporation

- (1) A person contravenes this subsection if:
- (a) the person:
 - (i) sells a tobacco product; or
 - (ii) offers a tobacco product for sale; or
 - (iii) otherwise supplies (whether or not for consideration) a tobacco product; to another person; and
 - (b) the other person is a constitutional corporation; and
 - (c) the product does not comply with a tobacco product requirement.

Note 1: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Note 2: See subsection 4(2) for an extended meaning of *offer*.

Fault-based offence

- (2) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

- (3) For the purposes of subsection (2), strict liability applies to paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (4) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

Civil penalty provision

- (5) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

48 Purchasing non-compliant tobacco products from a constitutional corporation

- (1) A person contravenes this subsection if:
- (a) the person purchases a tobacco product from another person; and
 - (b) the other person is a constitutional corporation; and
 - (c) the product does not comply with a tobacco product requirement.
- (2) Subsection (1) does not apply to an individual who purchases the tobacco product for his or her personal use.

Note: There is another exception to subsection (1) in section 49 (non-compliant tobacco products for export).

Fault-based offence

- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 2,000 penalty units.

Note 1: See section 50 in relation to the physical elements of the offence.

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

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- (4) For the purposes of subsection (3), strict liability applies to paragraph (1)(b).

Note: For strict liability in relation to a physical element of an offence, see subsection 6.1(2) of the *Criminal Code*.

Strict liability offence

- (5) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal Code*.

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

Civil penalty provision

- (6) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 94 of the Regulatory Powers Act).

Part 4—Export exception and physical elements of offences

49 Export exception for non-compliant tobacco products

Subsection (1) of any of sections 31 to 48 (other than section 36 or 46) does not apply if:

- (a) a person (the *relevant person*):
 - (i) engages in the conduct to which that subsection applies in relation to a tobacco product; or
 - (ii) manufactures retail packaging, and a tobacco product is packaged for retail sale in the retail packaging by another person; and
 - (b) a contract or arrangement has been entered into, or an understanding has been arrived at, for the tobacco product to be exported (whether or not the relevant person is a party to that contract, arrangement or understanding); and
 - (c) the relevant person engages in that conduct, or manufactures that retail packaging, in the course of, or for the purposes of, the tobacco product being exported; and
 - (d) if the relevant person supplies or purchases the tobacco product, or offers to supply the tobacco product:
 - (i) the supply is not a retail sale; or
 - (ii) the relevant person does not purchase the product in the course of a retail sale; or
 - (iii) the relevant person does not offer the product for retail sale;
- (as the case requires).

Note: A defendant bears an evidential burden in relation to the matters in subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

Section 50

50 Physical elements of offences

For the purposes of applying Chapter 2 of the *Criminal Code* to an offence in a section in this Chapter, the physical elements of the offence are set out in subsection (1) of the section.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

Chapter 4—Powers to monitor compliance with and investigate contraventions of this Act

Part 1—Simplified outline

51 Simplified outline

The following is a simplified outline of this Chapter:

The Regulatory Powers Act is triggered to allow the monitoring of compliance with, and the investigation of contraventions of, this Act.

Authorised officers may enter premises and exercise monitoring powers to determine whether there has been compliance with provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Authorised officers may enter premises and exercise investigation powers to determine whether there has been a contravention of provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Entry must be with the consent of the occupier of the premises or under a monitoring warrant or investigation warrant.

An authorised officer exercising monitoring or investigation powers may be assisted by other persons if that assistance is necessary and reasonable.

An authorised officer can require information or documents to be produced under Part 3 of this Chapter.

Chapter 4 Powers to monitor compliance with and investigate contraventions of this Act

Part 1 Simplified outline

Section 51

Authorised officers are appointed by the Secretary.

Part 1A—Monitoring

51A Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Related provisions

- (2) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), there are no related provisions.

Authorised applicant and authorised person

- (3) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised person in relation to the provisions mentioned in subsection (1).

Issuing officer

- (4) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1).

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Relevant chief executive

- (5) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (6) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).
- (7) In exercising powers or performing functions delegated under subsection (6), the delegate must comply with any directions of the Secretary.

Relevant court

- (8) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2).

Additional monitoring powers

- (9) For the purposes of determining whether a provision mentioned in subsection (1) has been, or is being, complied with, the additional monitoring powers mentioned in subsection (10) are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (10) The additional monitoring powers are the powers to take, test and analyse samples of any thing on premises entered under Part 2 of the Regulatory Powers Act.

Section 51A

Use of force in executing a warrant

- (11) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act as that Part applies in relation to the provisions mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Person assisting

- (12) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

Self-incrimination etc.

- (13) Despite section 17 of the Regulatory Powers Act, an individual is not excused from answering a question, or producing a document, under subsection 24(3) of that Act, as Part 2 of that Act applies in relation to this Act, on the ground that answering the question, or producing the document, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (14) However:
- (a) the answer given or document produced; and
 - (b) the answering of the question or the production of the document; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

Section 51A

are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

- (d) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
 - (e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.
- (15) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 24(3) of the Regulatory Powers Act, as Part 2 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Extension to external Territories

- (16) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Part 2—Investigation powers

52 Investigation powers

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant and authorised person

- (3) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

- (4) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

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Relevant chief executive

- (6) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (7) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).
- (8) In exercising powers or functions delegated under subsection (7), the delegate must comply with any directions of the Secretary.

Relevant court

- (9) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2).

Additional investigation powers

- (10) The additional powers mentioned in subsection (11) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1).
- (11) The additional investigation powers are the powers to take, test and analyse samples of evidential material on premises entered under section 48 of the Regulatory Powers Act as that section applies in relation to evidential material that relates to a provision mentioned in subsection (1).

Section 52

Use of force in executing a warrant

- (12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Person assisting

- (13) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Self-incrimination etc.

- (14) Despite section 47 of the Regulatory Powers Act, an individual is not excused from answering a question, or producing a document, under subsection 54(3) of that Act, as Part 3 of that Act applies in relation to this Act, on the ground that answering the question, or producing the document, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (15) However:
- (a) the answer given or document produced; and
 - (b) the answering of the question or the production of the document; and
 - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

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are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

- (d) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
 - (e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.
- (15A) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 54(3) of the Regulatory Powers Act, as Part 3 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Extension to external Territories

- (16) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

53 Modifications of Part 3 of the Regulatory Powers Act

Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act as if a reference in paragraphs 66(1)(c) and 67(1)(a) of the Regulatory Powers Act to 60 days were a reference to 90 days.

Note: Those paragraphs relate to the period for returning things seized under Part 3 of the Regulatory Powers Act.

Part 3—Power to require persons to give information, produce documents or answer questions

80 Power to require persons to give information, produce documents or answer questions

- (1) An authorised officer may give a notice to a person under subsection (2) if the authorised officer has reason to believe that the person has information or a document that is relevant to the administration or enforcement of this Act.
- (2) The authorised officer may, by written notice given to the person, require the person:
 - (a) to give any such information to a specified authorised officer; or
 - (b) to produce any such document to a specified authorised officer; or
 - (c) to appear before a specified authorised officer to answer questions.
- (3) The notice must:
 - (a) if paragraph (2)(a) or (b) applies:
 - (i) specify the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
 - (ii) specify the manner in which the person is required to comply with the notice; and
 - (b) if paragraph (2)(c) applies—specify a time and place at which the person is to appear; and
 - (c) in any case—state the effect of subsection (6) (offence for failure to comply).

Section 80A

Oath or affirmation

- (4) An authorised officer may require answers provided under paragraph (2)(c) to be verified by, or given on, oath or affirmation and either orally or in writing.
- (5) An authorised officer to whom information or answers are verified or given may administer the oath or affirmation.

Offence

- (6) A person commits an offence if:
 - (a) the person is given a notice under subsection (2); and
 - (b) the person fails to comply with the notice.

Penalty for contravention of this subsection: 30 penalty units.

80A Self-incrimination

- (1) A person is not excused from giving information, producing a document or answering a question under subsection 80(2) on the ground that the information, the production of the document, or answer to the question, might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual none of the following is admissible in evidence against the individual in criminal proceedings:
 - (a) the information given, the document produced or the answer given;
 - (b) giving the information, producing the document or answering the question;
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or answering the question.

Part 4—Authorised officers

81 Appointment of authorised officers

- (1) The Secretary may, in writing, appoint the following persons as authorised officers:
 - (a) a person who is appointed or engaged under the *Public Service Act 1999*;
 - (aa) a person who is appointed or engaged otherwise than under the *Public Service Act 1999*, by the Commonwealth or by a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*;
 - (b) a member or special member of the Australian Federal Police;
 - (c) a person:
 - (i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and
 - (ii) who has responsibilities in relation to health matters or in relation to compliance and enforcement in tobacco control matters;
 - (d) a member of the police force or police service of a State or Territory.
- (2) The Secretary may appoint a person as an authorised officer only if the Secretary is satisfied that the person has suitable qualifications, training or experience.
- (2A) The Secretary may appoint a person mentioned in paragraph (1)(c) or (d) as an authorised officer only with the agreement of the State or Territory concerned.
- (3) An authorised officer is appointed for the period specified in the instrument of appointment.

Chapter 4 Powers to monitor compliance with and investigate contraventions of this Act

Part 4 Authorised officers

Section 81

Note: An authorised officer is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

Chapter 5—Enforcing compliance with this Act

Part 1—Simplified outline

84 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter provides for civil penalty orders for contraventions of civil penalty provisions, for infringement notices, for enforceable undertakings and for injunctions.
- A civil penalty provision is enforceable under Part 4 of the Regulatory Powers Act (see section 85).
- A civil penalty order may be sought from the Federal Court of Australia for the contravention of a civil penalty provision.
- A strict liability offence is subject to an infringement notice under Part 5 of the Regulatory Powers Act (see section 86).
- A person can be given an infringement notice for an alleged contravention of a strict liability offence. The person can choose to pay an amount as an alternative to proceedings being brought against the person in relation to the alleged contravention. However, if the person chooses not to do so, proceedings can be brought against the person in relation to the alleged contravention.
- Undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act. If a person gives an undertaking, the undertaking may be enforced by a court order.

Section 84

- A court can grant an injunction under Part 7 of the Regulatory Powers Act restraining a person from contravening a provision of this Act or requiring a person to comply with a provision of this Act.

Part 2—Civil penalties, infringement notices, enforceable undertakings and injunctions

85 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision in this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2).

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions in this Act, extends to every external Territory.

Section 86

Liability of Crown

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions in this Act, does not make the Crown liable to be subject to civil proceedings for a contravention of a civil penalty provision.

86 Infringement notices

Provisions subject to an infringement notice

- (1) A strict liability offence against Chapter 3 is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an authorised officer is an infringement officer in relation to the offences mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the offences mentioned in subsection (1).
- (4) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive officer in relation to the provisions mentioned in subsection (1).
- (5) In exercising powers or functions delegated under subsection (4), the delegate must comply with any directions of the Secretary.

Extension to external Territories

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the offences mentioned in subsection (1), extends to every external Territory.

Liability of Crown

- (7) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the offences mentioned in subsection (1), does not make the Crown liable to be given an infringement notice.

87 Enforceable undertakings

Enforceable provisions

- (1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

Relevant court

- (4) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2).

Section 88

Extension to external Territories

- (5) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

88 Injunctions

Enforceable provisions

- (1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act.

Note: Part 7 of the Regulatory Powers Act allows a provision to be enforced by obtaining an injunction.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

Relevant court

- (4) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit and Family Court of Australia (Division 2).

Extension to external Territories

- (5) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Chapter 6—Miscellaneous provisions

Part 1—Simplified outline

106 Simplified outline

The following is a simplified outline of this Chapter:

- Part 2 of this Chapter contains miscellaneous provisions, such as the Secretary’s delegation power and reporting to Parliament on contraventions of this Act.

Part 2—Miscellaneous provisions

107 Delegation

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

Note: *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions delegated under subsection (1), the delegate must comply with any directions of the Secretary.

108 Reports to Parliament

- (1) As soon as practicable after the end of each financial year, the Minister must cause to be prepared a report on:
 - (a) the number and nature of any contraventions of this Act occurring in the financial year; and
 - (b) action taken in response to each contravention.
- (2) A person who prepares a report under subsection (1) must give a copy to the Minister.
- (3) The Minister must cause the report to be included in the annual report of the Department for that financial year.

109 Regulations

- (1) 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.
- (2) Without limiting subsection (1), the regulations may, for the purposes of section 46 of the *Trans-Tasman Mutual Recognition*

Section 109

Act 1997, declare that this Act is exempt from the operation of that Act.

Note: The exemption operates for a period of up to 12 months (see subsection 46(4) of that Act).

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

Endnotes

Endnote 1—About the endnotes

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.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Tobacco Plain Packaging Act 2011	148, 2011	1 Dec 2011	s 17–27A, 33–36, 39, 42–46, 49–80 and 83–105: 1 Oct 2012 (s 2(1) items 2, 5, 7, 9, 11, 13) s 30–32, 37, 38, 40, 41, 47 and 48: 1 Dec 2012 (s 2(1) items 4, 6, 8, 10) Remainder: 1 Dec 2011 (s 2(1) items 1, 3, 12, 14)	
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 551–555): 12 Apr 2013 (s 2(1) item 2)	Sch 1 (item 555)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 348): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Regulatory Powers (Standardisation Reform) Act 2017	124, 2017	6 Nov 2017	Sch 14: 6 Nov 2018 (s 2(1) item 3)	Sch 14 (items 30–33)
Tobacco Plain Packaging Amendment Act 2018	120, 2018	3 Oct 2018	4 Oct 2018 (s 2(1) item 1)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 776): 1 Sept 2021 (s 2(1) item 5)	—
Regulatory Powers (Standardisation Reform) Act 2021	32, 2021	26 Mar 2021	Sch 7: 26 Sept 2021 (s 2(1) items 21, 22)	Sch 7 (items 14– 17)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
s 4	am No 13, 2013; No 124, 2017; No 32, 2021
s 7	am No 124, 2017
s 9	am No 59, 2015; No 124, 2017
Chapter 3	
Part 1	
s 30	am No 124, 2017
Part 2	
Division 1	
s 31	am No 124, 2017
s 32	am No 124, 2017
s 33	am No 124, 2017
s 34	am No 124, 2017
s 35	am No 124, 2017
s 36	am No 124, 2017
Division 2	
s 37	am No 124, 2017
s 38	am No 124, 2017
s 39	am No 124, 2017
Part 3	
Division 1	
s 40	am No 124, 2017
s 41	am No 124, 2017
s 42	am No 124, 2017
s 43	am No 124, 2017
s 44	am No 124, 2017
s 45	am No 124, 2017

Endnote 4—Amendment history

Provision affected	How affected
s 46	am No 124, 2017
Division 2	
s 47	am No 124, 2017
s 48	am No 124, 2017
Part 4	
s 49	am No 124, 2017
Chapter 4	
Chapter 4 heading	rs No 32, 2021
Part 1	
s 51	rs No 124, 2017
	am No 32, 2021
Part 1A	
Part 1A	ad No 32, 2021
s 51A	ad No 32, 2021
	am No 32, 2021
Part 2	
Part 2	rs No 124, 2017
s 52	rs No 124, 2017
	am No 13, 2021; No 32, 2021
s 53	rep No 124, 2017
	ad No 32, 2021
s 54	rep No 124, 2017
s 55	rep No 124, 2017
s 56	rep No 124, 2017
s 57	rep No 124, 2017
s 58	rep No 124, 2017
s 59	rep No 124, 2017
s 60	rep No 124, 2017
s 61	rep No 124, 2017
s 62	rep No 124, 2017
s 63	rep No 124, 2017

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 64	rep No 124, 2017
s 65	rep No 124, 2017
s 66	rep No 124, 2017
s 67	rep No 124, 2017
s 68	rep No 124, 2017
s 69	rep No 124, 2017
s 70	rep No 124, 2017
s 71	rep No 124, 2017
s 72	rep No 124, 2017
s 73	rep No 124, 2017
s 74	rep No 124, 2017
s 75	rep No 124, 2017
s 76	rep No 124, 2017
s 77	rep No 124, 2017
s 78	rep No 124, 2017
s 79	am No 13, 2013
	rep No 124, 2017
Part 3	
s 80	am No 124, 2017
s 80A.....	ad No 124, 2017
Part 4	
Part 4 heading	rs No 124, 2017
s 81	am No 120, 2018
s 82	rep No 124, 2017
s 83	rep No 124, 2017
Chapter 5	
Part 1	
s 84	rs No 124, 2017
	am No 32, 2021
Part 2	
Part 2 heading	rs No 32, 2021

Endnote 4—Amendment history

Provision affected	How affected
Part 2.....	rs No 124, 2017
s 85	rs No 124, 2017
	am No 13, 2021
s 86	rs No 124, 2017
s 87	rep No 124, 2017
	ad No 32, 2021
	am No 32, 2021
s 88	rep No 124, 2017
	ad No 32, 2021
	am No 32, 2021
s 89	rep No 124, 2017
s 90	rep No 124, 2017
s 91	rep No 124, 2017
s 92	rep No 124, 2017
s 93	rep No 124, 2017
s 94	rep No 124, 2017
s 95	rep No 124, 2017
s 96	rep No 124, 2017
s 97	rep No 124, 2017
s 98	rep No 124, 2017
s 99	rep No 124, 2017
Part 3.....	rep No 124, 2017
s 100	rep No 124, 2017
s 101	rep No 124, 2017
s 102	rep No 124, 2017
s 103	rep No 124, 2017
s 104	rep No 124, 2017
s 105	rep No 124, 2017