Greenhouse and Energy Minimum Standards Act 2012

No. 132, 2012

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About this compilation

This compilation

This is a compilation of the *Greenhouse and Energy Minimum Standards Act 2012* that shows the text of the law as amended and in force on 1 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 promote the development and adoption of products that use less energy and produce fewer greenhouse gases, and for related purposes

Part 1—Preliminary

Division 1—Preliminary

1 Short title

This Act may be cited as the *Greenhouse and Energy Minimum Standards Act 2012*.

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 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 September 2012
2. Sections 3 to 16	1 October 2012.	1 October 2012
3. Section 17	1 October 2013.	1 October 2013
4. Sections 18 to 177	1 October 2012.	1 October 2012

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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.

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Division 2—Guide to this Act

3 Guide to this Act

Overview

This Act is about promoting the development and adoption of products to reduce energy use and greenhouse gas production (see the objects in Division 3 of this Part).

This is achieved by applying greenhouse and energy minimum standards (GEMS) in association with the supply and commercial use of products that use energy, or affect the energy used by another product. These standards are provided for by requirements in Ministerial determinations (GEMS determinations).

Key concepts (Part 2)

The key concepts used in this Act are unfolded in Part 2. These include GEMS products, GEMS determinations, models of GEMS products, registration of models against GEMS determinations, and supplying (or offering to supply) GEMS products.

Supply and commercial use of products (Part 3)

Generally speaking, a product (a GEMS product) covered by a GEMS determination can only be supplied or offered for supply, or used for a commercial purpose, if:

(a) the model of the product is registered under this Act against the determination; and
(b) the product complies with the determination; and
(c) the supply, offer or use complies with the determination.

Contravention of these rules may result in prosecution for offences or exposure to liability for civil penalties.

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GEMS determinations and registration (Parts 4, 5 and 6)

GEMS determinations cover different product classes. They specify requirements for energy consumption, greenhouse gas production, labelling and some other matters, including the environment and human health.

Generally speaking, all models of GEMS products must be registered on the GEMS Register to make sure they comply with relevant GEMS determinations. A senior officer of the Department (the GEMS Regulator) is responsible for the registration system and, more broadly, the administration of this Act.

Monitoring, investigation and enforcement (Parts 7 and 8)

GEMS inspectors may enter public areas of premises used in connection with the supply of GEMS products. GEMS inspectors may purchase GEMS products there (and exercise certain other powers) in order to investigate compliance with this Act.

GEMS inspectors and the GEMS Regulator have powers to monitor compliance with this Act, to monitor whether information given under this Act is correct and to investigate suspected non-compliance with this Act. Infringement notices may be issued for suspected contraventions of civil penalty provisions of this Act. Enforceable undertakings and injunctions may be used to enforce compliance with this Act.

Details of offences, contraventions and adverse decisions, including the names of those involved, may also be publicised.

Merits review and protection of information (Parts 9 and 10)

Decisions about registration may be reviewed internally and by the Administrative Appeals Tribunal. The Act also protects commercially sensitive information against unauthorised disclosure.

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Introductory matters (Part 1)

There is a Dictionary in Division 4 of this Part. The Dictionary is a list of every term that is defined in this Act. A term is either defined in the Dictionary itself, or elsewhere in this Act. If a term is defined elsewhere, the Dictionary includes a signpost.

The application of this Act to the Crown and in the external Territories is dealt with in Division 5 of this Part. That Division also provides for when this Act is intended to operate concurrently with State and Territory laws.

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Division 3—Objects of this Act

4 Objects of this Act

The objects of this Act are:

(a) to give effect to certain obligations that Australia has under the Climate Change Convention; and

(b) to promote the development and adoption of products that:

(i) use less energy; or

(ii) produce fewer greenhouse gases; or

(iii) contribute to reducing the amount of energy used, or greenhouse gases produced, by other products.

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Division 4—The Dictionary and other interpretive provisions

5 The Dictionary

In this Act:

acquisition of property: see section 174.

affected:

(a) for when a model's registration in relation to a product class is ***affected*** by a replacement determination—see subsection 13(3); and

(b) for when a person is ***affected*** by a reviewable decision—see section 164.

agency means:

(a) a Department of State; or

(b) any agency, authority or body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth or of a State or Territory.

Australia, when used in a geographical sense, includes the external Territories.

authorised to test GEMS products in a product class: see section 125.

category A product for a product class: see subsection 11(4) and section 29.

category B product for a product class: see subsection 11(4) and section 29.

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

Climate Change Convention means the United Nations Framework Convention on Climate Change, done at New York on

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9 May 1992, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 2 ([1994] ATS 2). In 2012, 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).

Commonwealth place means a place referred to in paragraph 52(i) of the Constitution.

compliance obligation: each of the following is a compliance obligation:

(a) an offence against this Act;
(b) a civil penalty provision of this Act;
(c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

constitutional trade or commerce means trade or commerce:

(a) between Australia and a place outside Australia; or
(b) among the States; or
(c) between a State and a Territory; or
(d) between 2 Territories; or
(e) within a Territory.

contact person, for a registration, means a contact person currently entered in the GEMS Register in relation to the registration.

contravene an offence or civil penalty provision has a meaning affected by section 6.

Note: The meaning of c***ontravention*** is correspondingly affected (see section 18A of the *Acts Interpretation Act 1901*).

covered by: a product class is ***covered by*** a GEMS determination if:

(a) the GEMS determination specifies that it covers the product class (see subsection 11(2)); and
(b) the GEMS determination is in force (see sections 34 and 35).

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evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

family of models: see subsection 12(3).

foreign jurisdiction means a foreign country, or a part of a foreign country.

GEMS is short for Greenhouse and Energy Minimum Standards.

GEMS business premises means any premises that are open to the public on a regular basis and:

(a) that are used for, or in connection with, the supply of one or more GEMS products; or

(b) at which one or more GEMS products are used for a commercial purpose.

GEMS determination: see subsection 11(2) and section 23.

GEMS labelling requirements: see section 26.

GEMS level requirements: see section 25.

GEMS product: see subsection 11(1).

GEMS Register: see section 39.

GEMS Regulator: see section 70.

high efficiency level for a product class: see paragraph 27(1)(a).

import into Australia includes bring into Australia.

issuing officer means:

(a) a magistrate; or

(b) a Judge of the Federal Circuit and Family Court of Australia (Division 2); or

(c) a Judge of the Federal Court of Australia.

just terms: see section 174.

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limited grandfathering period for a product class: see section 31.

manufacture, in relation to a product, means the creation of a product essentially different from the matters or substances that go into that creation, but does not include the following activities (whether performed alone or in combination with each other):

(a) restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;

(b) minimal operations of pressing, labelling, ticketing, packaging and preparation for sale, whether conducted alone or in combination with each other;

(c) quality control inspections.

manufacturer of a product means the person who performs, or has had performed on the person's behalf, the last process of manufacture of the product.

model: see subsection 12(2).

model identifier: see paragraph 12(2)(c).

offer to supply: see subsection 14(3).

operate: a product that uses energy ***operates*** at any time when the product is using energy.

participating jurisdiction: see section 33.

person who has GEMS information: see section 122.

premises includes the following:

(a) a structure, building, vehicle, vessel or aircraft;

(b) a place (whether or not enclosed or built on);

(c) a part of a thing referred to in paragraph (a) or (b).

product classes: see paragraph 11(2)(a).

protected information: see subsection 169(3).

register a model in relation to a product class: see section 43.

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registered against a GEMS determination: see section 13.

registrant, for a model's registration in relation to a product class, means:

(a) unless paragraph (b) applies—the person who applied for the model to be registered in relation to that product class; or

(b) if the GEMS Regulator, under section 47, has varied the registration to specify another person as the registrant for the registration—the person for the time being specified as the registrant for the registration in accordance with that section.

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

relevant court means:

(a) the Federal Court of Australia; or

(aa) the Federal Circuit and Family Court of Australia (Division 2); or

(b) a Supreme Court of a State or Territory.

replacement determination: see subsection 11(5) and section 35.

reviewable decision has the meaning given by section 164.

revoked determination: see subsection 11(5).

second-hand: a product is ***second-hand*** at the time of supplying or offering to supply the product if, and only if, there has been a supply of the product (other than a wholesale supply) in Australia before that time.

Secretary means the Secretary of the Department.

supply: see subsection 14(1).

suspension notice: see subsection 51(1).

this Act includes regulations and GEMS determinations made under this Act.

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transitional GEMS labelling requirement means a GEMS labelling requirement that is expressed in the GEMS determination to be made for the purpose mentioned in paragraph 26(2)(c).

6 Contravening an offence provision or a civil penalty provision

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

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Division 5—Application of this Act

7 Act binds Crown

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

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.

(4) The protection in subsection (2) does not apply to an authority of the Crown.

8 Extension to external Territories

This Act extends to every external Territory.

9 Concurrent operation of State and Territory laws

(1) This Act is not intended to exclude or limit the operation of a law of a State or Territory (the ***State or Territory law***) to the extent that:

(a) the State or Territory law applies minimum requirements (however described) relating to greenhouse gas production or energy use in association with the supply and commercial use of a product that uses energy, or affects the energy used by another product; and

(b) if the product is a GEMS product (in a product class covered by a GEMS determination)—those requirements are more stringent than the corresponding requirements applying to the product class under the GEMS determination; and

(c) the State or Territory law is capable of operating concurrently with this Act.

(2) Subject to subsection (1), this Act is not intended to exclude or limit the concurrent operation of a State or Territory law if such a law makes:

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(a) an act or omission that is an offence against a provision of this Act; or

(b) a similar act or omission;

an offence against the State or Territory law.

(3) Subsection (2) applies even if the State or Territory law does any one or more of the following:

(a) provides for a penalty for the offence that differs from the penalty provided for in this Act;

(b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Act;

(c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Act.

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Part 2—Key concepts

Division 1—Guide to this Part

10 Guide to this Part

This Part is about some of the key concepts used in this Act, and the inter-relationships between those concepts.

This Act applies to GEMS products, which are products that use energy, or affect the amount of energy used by another product, and belong to a product class for which a GEMS determination has been made (under Part 4).

GEMS products may be determined to be category A products or category B products. Category B products have a higher impact on energy use or greenhouse gas production than category A products. Different penalty levels apply to contraventions of the main rules about supply and use of GEMS products in Part 3, depending on the category of the product.

GEMS products belong to a particular model if they have the same technical specifications, brand name (or manufacturer) and a unique identifier. Generally speaking, all models of GEMS products must be registered under Part 5 (in the GEMS Register) against GEMS determinations.

A model's registration may be affected by a replacement determination updating the GEMS determination against which the model was initially registered. This might affect whether products of the model can be supplied, or used for commercial purposes.

There is a broad concept of supply and offer to supply. This affects the application of the main rules in Division 2 of Part 3 about supplying and offering to supply GEMS products.

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Division 2—Key concepts

11 GEMS products, GEMS determinations and product classes

(1) A ***GEMS product*** is a product that:

(a) uses energy or affects the amount of energy used by another product; and

(b) is in a product class covered by a GEMS determination.

(2) A ***GEMS determination*** is a determination made by the Minister under section 23 that:

(a) specifies one or more classes of products (***product classes***) that it covers; and

(b) specifies requirements for products in those product classes in accordance with Part 4.

Note 1: For paragraph (a), a class of products may be specified by reference to a range of matters, including:

(a) the function the products perform; and

(b) the materials from which the products are manufactured; and

(c) the size or capacity of the products; and

(d) whether the products contain a particular feature (for example a screen or monitor) or are capable of operating in different modes (for example in standby mode).

Note 2: For when a GEMS determination is in force, see sections 34 and 35.

(3) A single product may be in more than one product class (whether or not specified in the same GEMS determination).

Note: If a single product is in more than one product class, the product must comply with requirements under this Act for each of those product classes.

For example, a product that operates both as a washing machine and as a clothes dryer would need to comply with separate requirements for washing machines (where washing machines are a product class) and clothes dryers (where clothes dryers are a product class).

(4) A GEMS product in a product class covered by a GEMS determination is either a ***category A product*** or a ***category B***

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product for that product class, as specified in the determination (see section 29).

Note: Different penalty levels apply for certain offences under this Act, depending on whether a product is a category A product or a category B product for a product class.

(5) A ***replacement determination*** is a GEMS determination made in accordance with section 35 that specifies that it replaces another GEMS determination (a ***revoked determination***).

12 Models of GEMS products to be registered in relation to product classes

(1) A model of a GEMS product in a particular product class must be registered under Part 5 in relation to that product class, unless the model is exempt from registration in relation to that product class as specified in a GEMS determination (see section 30).

Note 1: If the model is in more than one product class, the model will need to be registered under Part 5 in relation to each of those product classes.

Note 2: Offences apply in relation to supplying a GEMS product, or using a GEMS product for a commercial purpose, if the model of the product is not registered (see Part 3).

(2) Two or more GEMS products are of the same ***model*** if, and only if:

(a) the products have the same technical specifications, in so far as those specifications relate to the extent to which the products comply with the requirements of this Act; and

(b) either:

(i) there is a single brand or trade mark used in supplying or offering to supply the products; or

(ii) if there is no such brand or trade mark—the products have the same manufacturer; and

(c) there is a single unique identifier (the ***model identifier***) used in supplying or offering to supply the products, or manufacturing the products, to identify the products as being of that model.

Note 1: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

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Note 2: A model may be registered in relation to a product class even if there is only one product of that model (see subsection 41(2)).

(3) A single registration may cover 2 or more models in relation to a product class only if those models are in the same ***family of models*** in accordance with the GEMS determination for that product class (see section 28).

(4) A model cannot be covered by more than one registration in relation to a particular product class.

13 Models to be registered against GEMS determinations

(1) Under Part 5, a model of a GEMS product is ***registered against*** a GEMS determination in relation to a product class.

(2) The GEMS determination against which the model is registered in relation to the product class is either:

(a) the GEMS determination against which the model is registered under section 43 (registration by the GEMS Regulator); or

(b) a replacement determination against which the model is taken to be registered because of subsection 36(2) (registration not affected by replacement determination).

(3) A model's registration in relation to a product class is, or is not, ***affected*** by a replacement determination as specified in the replacement determination (see section 36).

Note: If a model's registration is affected by a replacement determination:

(a) the registration will cease to be in force under section 48 on the day the replacement determination comes into force; and

(b) products of the model imported into, or manufactured in, Australia after the replacement determination comes into force might not be able to be supplied, or used for a commercial purpose, unless the model is registered against the replacement determination (see Part 3).

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14 Supplying and offering to supply GEMS products

(1) A ***supply*** of a GEMS product includes a supply of the product by way of sale, exchange, gift, lease, loan, hire or hire-purchase.

(2) For the purposes of subsection (1), it is irrelevant whether the supply is:

(a) for consideration; or

(b) a wholesale or retail supply.

Note: Offences under this Act relating to supplying, or offering to supply, GEMS products do not apply in relation to second-hand products.

(3) ***Offer to supply*** a GEMS product includes make available, expose, display or advertise the product for supply.

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Part 3—Requirements for suppliers and commercial users of GEMS products

Division 1—Guide to this Part

15 Guide to this Part

This Part sets out the main rules that govern supplying and offering to supply GEMS products and using GEMS products for commercial purposes.

Division 2 permits a GEMS product to be supplied or offered for supply only if certain GEMS determination requirements and registration requirements have been complied with.

Division 3 permits a GEMS product to be used for a commercial purpose only if certain GEMS determination requirements and registration requirements have been complied with.

Generally speaking, a product imported into, or manufactured in, Australia before the relevant GEMS determination comes into force may continue indefinitely to be supplied (or offered for supply), or used for a commercial purpose, without complying with the requirements of the GEMS determination or being registered against it (unless there is a limited grandfathering period (see section 31)).

The rules in Division 2 governing supplying, and offering to supply, GEMS products do not apply to second-hand products. The rules in Division 3 governing use of GEMS products for commercial purposes do not apply to products supplied to the user in Australia.

A particular model of a GEMS product may be exempt (under section 37) from particular requirements of GEMS determinations

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on certain conditions. In addition, models of products in a particular product class may be exempt (under section 30) from registration requirements in relation to that product class.

A particular use of a GEMS product may also be exempt from the application of the rules in Division 3 if it is personal use, for testing purposes or is prescribed by the regulations (see section 20).

Contravening the rules in Division 2 or 3 may result in prosecution for offences or exposure to liability for civil penalties. All offences are strict liability. Different penalties apply depending on whether the relevant GEMS product is a category A or a category B product.

Division 4 sets out general provisions about the supply and use of GEMS products, and in particular the potential constitutional limitations that might apply.

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Division 2—Supplying GEMS products

16 Supplying GEMS products—complying with GEMS determinations

(1) A person must not supply, or offer to supply, a GEMS product if:
  (a) the product is in a product class covered by a GEMS determination; and
  (b) either or both of the following apply:
    (i) the product does not comply with a requirement of the GEMS determination;
    (ii) a requirement of the GEMS determination is not complied with in supplying, or offering to supply, the product.

(2) Subsection (1) does not apply if:
  (a) the product is a second-hand product at the time of the supply or offer; or
  (b) the following conditions are satisfied:
    (i) the model of the product is exempt under section 37 from the requirement;
    (ii) any conditions of the exemption (see subsection 37(2)) are complied with in connection with the supply or offer; or
  (c) the following conditions are satisfied:
    (i) the product is imported into, or the product's last process of manufacture is performed in, Australia at a time (the ***earlier time***) before the GEMS determination comes into force;
    (ii) if there is a limited grandfathering period under the GEMS determination for the product class (see section 31)—the supply or offer occurs before the end of that period;

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(iii) all transitional GEMS labelling requirements of the GEMS determination are complied with in supplying or offering to supply the product;

(iv) the product currently complies with any pre-existing GEMS determination that was in force at the earlier time;

(v) if there was no such pre-existing GEMS determination—the supply of the product (or an offer to supply the product) in a State or Territory at the earlier time would not have contravened a law of the State or Territory relating to energy use by products, or greenhouse gases resulting from operating products.

Strict liability offence—category A products

(3) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category A product for the product class.

Penalty: 60 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

Strict liability offence—category B products

(4) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category B product for the product class.

Penalty: 120 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

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Civil penalty provision—category A products

(5) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category A product for the product class.

Civil penalty: 60 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Civil penalty provision—category B products

(6) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category B product for the product class.

Civil penalty: 120 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Evidential burden for matters in subsection (2)

(7) In a prosecution for an offence against subsection (3) or (4), the prosecution bears an evidential burden in relation to the matters in paragraphs (2)(b) and (c), despite subsection 13.3(3) of the *Criminal Code*.

Note: However, a defendant still bears an evidential burden in relation to a matter in paragraph (2)(a), because subsection 13.3(3) of the *Criminal Code* still applies in relation to that paragraph.

(8) In proceedings for a civil penalty order under the Regulatory Powers Act for a contravention of subsection (5) or (6):

(a) a person who wishes to rely on paragraph (2)(a) bears an evidential burden in relation to a matter in that paragraph; and

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(b) the person applying for the order bears an evidential burden in relation to the matters in paragraphs (2)(b) and (c).

17 Supplying GEMS products—model not registered

(1) A person must not supply, or offer to supply, a GEMS product if:
   (a) the product is in a product class covered by a GEMS determination; and
   (b) the model of the product is not registered against that GEMS determination in relation to that product class.

(2) Subsection (1) does not apply if:
   (a) the product is a second-hand product at the time of the supply or offer; or
   (b) the model of the product is exempt under section 30 from registration in relation to that product class.

Strict liability offence—category A products

(3) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category A product for the product class.

Penalty: 60 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

Strict liability offence—category B products

(4) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category B product for the product class.

Penalty: 120 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

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Civil penalty provision—category A products

(5) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category A product for the product class.

Civil penalty: 60 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Civil penalty provision—category B products

(6) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category B product for the product class.

Civil penalty: 120 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Evidential burden for matters in subsection (2)

(7) In a prosecution for an offence against subsection (3) or (4), the prosecution bears an evidential burden in relation to a matter in paragraph (2)(b), despite subsection 13.3(3) of the *Criminal Code*.

Note: However, a defendant still bears an evidential burden in relation to a matter in paragraph (2)(a), because subsection 13.3(3) of the *Criminal Code* still applies in relation to that paragraph.

(8) In proceedings for a civil penalty order under the Regulatory Powers Act for a contravention of subsection (5) or (6):

(a) a person who wishes to rely on paragraph (2)(a) bears an evidential burden in relation to a matter in that paragraph; and

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(b) the person applying for the order bears an evidential burden in relation to a matter in paragraph (2)(b).

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Division 3—Using GEMS products for commercial purposes

18 Using GEMS products for commercial purposes—complying with GEMS determinations

(1) A person must not use a GEMS product for a commercial purpose if:

(a) the GEMS product is in a product class covered by a GEMS determination; and

(b) the GEMS product does not comply with a requirement of the GEMS determination; and

(c) that is the person's first use of the GEMS product.

(2) Subsection (1) does not apply if:

(a) the product was supplied to the person in Australia; or

(b) the use of the product is exempt under section 20; or

(c) the following conditions are satisfied:

(i) the model of the product is exempt under section 37 from the requirement;

(ii) any conditions of the exemption (see subsection 37(2)) are complied with in connection with the use of the product; or

(d) the following conditions are satisfied:

(i) the product is imported into, or the product's last process of manufacture is performed in, Australia at a time (the ***earlier time***) before the GEMS determination comes into force;

(ii) if there is a limited grandfathering period under the GEMS determination for the product class (see section 31)—the use of the product occurs before the end of that period;

(iii) the product currently complies with any pre-existing GEMS determination that was in force at the earlier time;

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(iv) if there was no such pre-existing GEMS determination—the use of the product for a commercial purpose in a State or Territory at the earlier time would not have contravened a law of the State or Territory relating to energy use by products, or greenhouse gases resulting from operating products.

Strict liability offence—category A products

(3) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category A product for the product class.

Penalty: 60 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

Strict liability offence—category B products

(4) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category B product for the product class.

Penalty: 120 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

Civil penalty provision—category A products

(5) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category A product for the product class.

Civil penalty: 60 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

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Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Civil penalty provision—category B products

(6) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category B product for the product class.

Civil penalty: 120 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Evidential burden for matters in subsection (2)

(7) In a prosecution for an offence against subsection (3) or (4), the prosecution bears an evidential burden in relation to the matters in paragraphs (2)(c) and (d), despite subsection 13.3(3) of the *Criminal Code*.

Note: However, a defendant still bears an evidential burden in relation to a matter in paragraph (2)(a) or (b), because subsection 13.3(3) of the *Criminal Code* still applies in relation to those paragraphs.

(8) In proceedings for a civil penalty order under the Regulatory Powers Act for a contravention of subsection (5) or (6):

(a) a person who wishes to rely on paragraph (2)(a) or (b) bears an evidential burden in relation to a matter in that paragraph; and

(b) the person applying for the order bears an evidential burden in relation to the matters in paragraphs (2)(c) and (d).

19 Using GEMS products for commercial purposes—model not registered

(1) A person must not use a GEMS product for a commercial purpose if:

(a) the GEMS product is in a product class covered by a GEMS determination; and

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(b) the model of the GEMS product is not registered against that GEMS determination in relation to that product class; and
(c) that is the person's first use of the GEMS product.

(2) Subsection (1) does not apply if:
(a) the product was supplied to the person in Australia; or
(b) the use of the product is exempt under section 20; or
(c) the model of the product is exempt under section 30 from registration in relation to that product class.

Strict liability offence—category A products

(3) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category A product for the product class.

Penalty: 60 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

Strict liability offence—category B products

(4) A person commits an offence of strict liability if the person contravenes subsection (1) and the product is a category B product for the product class.

Penalty: 120 penalty units.

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

Note 2: See subsection (7) (evidential burden for matters in subsection (2)).

Civil penalty provision—category A products

(5) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category A product for the product class.

Civil penalty: 60 penalty units.

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Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Civil penalty provision—category B products

(6) A person is liable to a civil penalty if the person contravenes subsection (1) and the product is a category B product for the product class.

Civil penalty: 120 penalty units.

Note 1: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section 94 of the Regulatory Powers Act).

Note 2: See subsection (8) (evidential burden for matters in subsection (2)).

Evidential burden for matters in subsection (2)

(7) In a prosecution for an offence against subsection (3) or (4), the prosecution bears an evidential burden in relation to a matter in paragraph (2)(c), despite subsection 13.3(3) of the *Criminal Code*.

Note: However, a defendant still bears an evidential burden in relation to a matter in paragraph (2)(a) or (b), because subsection 13.3(3) of the *Criminal Code* still applies in relation to those paragraphs.

(8) In proceedings for a civil penalty order under the Regulatory Powers Act for a contravention of subsection (5) or (6):

(a) a person who wishes to rely on paragraph (2)(a) or (b) bears an evidential burden in relation to a matter in that paragraph; and

(b) the person applying for the order bears an evidential burden in relation to a matter in paragraph (2)(c).

20 Exempt uses of GEMS products

The following uses of a product are exempt for the purposes of this Division:

(a) personal use by an individual;

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(b) use for the purpose of testing the product (whether the testing is to determine whether the product complies with requirements of GEMS determinations, or for any other purpose);

(c) a use specified in regulations made for the purposes of this paragraph.

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Division 4—General provisions relating to supply and use of GEMS products

21 Constitutional limitation

References to supply

(1) Without limiting its effect apart from this subsection, this Act also has the effect it would have if each reference to supply in relation to a product were, by express provision, confined to:

(a) supply of the product, being a supply whose regulation is reasonably appropriate and adapted to give effect to Australia's obligations under:

(i) the Climate Change Convention; or

(ii) another agreement between Australia and one or more other countries; or

(b) supply of the product by or to a constitutional corporation; or

(c) supply of the product in the course of constitutional trade or commerce; or

(d) supply of the product using a postal, telegraphic, telephonic, or other like service (within the meaning of paragraph 51(v) of the Constitution); or

(e) supply of the product by or to the Commonwealth or a Territory, or by or to an authority or instrumentality of the Commonwealth or a Territory; or

(f) supply of the product occurring in a Commonwealth place or a Territory.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

References to offer to supply

(2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if each reference to an offer to supply in relation to a product were, by express provision, confined to:

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(a) an offer to supply the product, being an offer whose regulation is reasonably appropriate and adapted to give effect to Australia's obligations under:
  (i) the Climate Change Convention; or
  (ii) another agreement between Australia and one or more other countries; or
(b) an offer to supply the product made by or to a constitutional corporation; or
(c) an offer to supply the product made in the course of constitutional trade or commerce; or
(d) an offer to supply the product made using a postal, telegraphic, telephonic, or other like service (within the meaning of paragraph 51(v) of the Constitution); or
(e) an offer to supply the product made by or to the Commonwealth or a Territory, or by or to an authority or instrumentality of the Commonwealth or a Territory; or
(f) an offer to supply the product occurring in a Commonwealth place or a Territory.

References to use for commercial purposes

(3) Without limiting its effect apart from this subsection, this Act also has the effect it would have if each reference to use of a product for a commercial purpose were, by express provision, confined to:
(a) use of a product for a commercial purpose, being a use whose regulation is reasonably appropriate and adapted to give effect to Australia's obligations under:
  (i) the Climate Change Convention; or
  (ii) another agreement between Australia and one or more other countries; or
(b) use of the product for a commercial purpose by a constitutional corporation; or
(c) use of the product for a commercial purpose in the course of constitutional trade or commerce; or

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(d) use of the product for a commercial purpose in providing a postal, telegraphic, telephonic, or other like service (within the meaning of paragraph 51(v) of the Constitution); or

(e) use of the product for a commercial purpose by the Commonwealth or a Territory, or by an authority or instrumentality of the Commonwealth or a Territory; or

(f) use of the product for a commercial purpose occurring in a Commonwealth place or a Territory.

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Part 4—GEMS determinations

Division 1—Guide to this Part

22 Guide to this Part

This Part is about how GEMS determinations are made, and the requirements (GEMS requirements) which are imposed by the determinations.

Division 2 provides for GEMS determinations to be made by Ministerial determination, subject to the consent of a certain number of States and Territories to the making and replacement of GEMS determinations.

GEMS determinations must contain requirements relating to energy use or greenhouse gas production (GEMS level requirements) or requirements about labelling (GEMS labelling requirements). They may also contain other requirements relating to efficiency levels, performance, the environment and human health.

Division 3 provides for GEMS determinations to be updated by replacement determinations. Replacement determinations must specify whether they affect the registration of models of GEMS products.

If a replacement determination affects a model's registration, the registration ceases to be in force under Part 5 from the time the replacement determination comes into force. This might affect a person's ability to supply or use for a commercial purpose products of the model imported into, or manufactured in, Australia after that time (see Part 3).

If a replacement determination does not affect a model's registration, the model is taken to continue to be registered against

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the replacement determination, and may continue to be supplied (or offered for supply) and used for commercial purposes relying on that registration.

Division 4 allows product models to be exempted from requirements of GEMS determinations.

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Division 2—Making GEMS determinations

23 Minister may make GEMS determinations

(1) The Minister may, by legislative instrument, make a determination that specifies one or more classes of products that it covers, if the products in those classes:

(a) use energy; or

(b) affect the amount of energy used by other products.

Note: A determination under this subsection is referred to in this Act as a ***GEMS determination*** and classes of product covered by GEMS determinations are referred to as ***product classes*** (see section 11).

(2) A GEMS determination may specify one or more classes of product that are not covered by the determination.

24 GEMS requirements—general

(1) A GEMS determination must specify either or both of the following for each product class covered by the determination:

(a) GEMS level requirements in accordance with section 25;

(b) GEMS labelling requirements in accordance with section 26.

(2) A GEMS determination may also specify other requirements, in accordance with section 27, for a product class covered by the determination.

Note: Offences apply in relation to supplying a GEMS product, or using a GEMS product for a commercial purpose, if requirements of a GEMS determination are not complied with (see Part 3).

25 GEMS requirements—GEMS level requirements

The ***GEMS level requirements*** for a product class are as follows:

(a) requirements relating to one or more of the following:

(i) the amount of energy used by operating products in that product class;

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(ii) the amount of greenhouse gases resulting from operating products in that product class;

(iii) the effect of those products on the amount of energy used by operating other products;

(b) requirements for conducting tests in relation to products in that product class, using the methods specified in the determination, in order to determine whether products in that product class meet the requirements referred to in paragraph (a).

26 GEMS requirements—GEMS labelling requirements

(1) The ***GEMS labelling requirements*** for a product class are as follows:

(a) requirements relating to the information that must be communicated in connection with supplying or offering to supply products in that product class (see subsection (2));

(b) requirements relating to the manner in which that information must be communicated (see subsection (2));

(c) requirements for conducting tests in relation to products in that product class, using the methods specified in the determination, in order to rate them against criteria specified for the product class in the determination for the purposes of complying with a requirement under paragraph (a).

Note: Requirements under paragraph (a) or (b) may relate, for example, to one or more of the following:

(a) the characteristics, contents, placement and quality of labels or marks attached or applied to products or displayed on packaging for products;

(b) documents or other material used for, or provided in connection with, the supply of products;

(c) advertising products.

(2) A requirement may only be specified under paragraph (1)(a) or (b) in relation to a product class for the purpose of:

(a) ensuring that products in that product class can be compared with other products in relation to a matter that is, or could be,

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the subject of a requirement of the GEMS determination for that product class; or

(b) assisting with monitoring compliance with this Act; or

(c) providing a transition to regulation of products in the product class under the GEMS determination (including because the products were not previously covered by a GEMS determination or because the GEMS determination is a replacement determination).

Note 1: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

Note 2: A requirement specified for the purpose of paragraph (2)(c) is a ***transitional GEMS labelling requirement***.

27 GEMS requirements—other requirements

(1) A GEMS determination may specify any or all of the following for any one or more product classes covered by the determination:

(a) requirements for products in that product class to meet a specified level (the ***high efficiency level***) at a particular time (see subsection (2));

(b) requirements relating to the performance of products in that product class (see subsection (3));

(c) requirements relating to the impact of products in that product class on the environment or the health of human beings (see subsection (3));

(d) requirements of a kind specified in the regulations for the purposes of this paragraph;

(e) requirements for conducting tests in relation to products in that product class, using the methods specified in the determination, in relation to a requirement mentioned in paragraph (a), (b), (c) or (d).

(2) The requirements referred to in paragraph (1)(a) (high efficiency level) must relate to one or more of the following:

(a) the amount of energy used by operating products in that product class;

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(b) the amount of greenhouse gases resulting from operating products in that product class;

(c) the effect of those products on the amount of energy used by operating other products that use energy.

(3) Requirements may only be specified in relation to a product class under paragraph (1)(b) (product performance) or (c) (impact of products on environment or human health) if the GEMS determination also specifies GEMS level requirements for the product class.

28 GEMS determinations—families of models

A GEMS determination must specify, for each product class covered by the determination, the circumstances in which 2 or more models in that product class are in the same family of models.

Note: See also subsection 12(3) (registration may cover 2 or more models only if those models are a family of models).

29 GEMS determinations—category A and category B products

(1) A GEMS determination must specify, for each product class covered by the determination, whether products in that product class are category A products or category B products.

Note: Different penalty levels apply for certain offences under this Act, depending on whether a product is a category A product or a category B product for a product class.

(2) Before specifying that products in a product class are category B products, the Minister must be satisfied that products in that class have a high impact on energy use or greenhouse gas production.

30 GEMS determinations—models exempt from registration

A GEMS determination may specify, for a product class covered by the determination, that models of products in that product class are exempt from registration under Part 5 in relation to that product class.

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Note: See subsection 12(1) for the requirement for models of GEMS products to be registered under Part 5.

31 GEMS determinations—limited grandfathering period

(1) A GEMS determination may specify, for a product class covered by the determination, a ***limited grandfathering period*** for products in the product class.

(2) The limited grandfathering period:
  (a) starts when the GEMS determination comes into force; and
  (b) ends at a time specified in the GEMS determination.

Note: The effect of specifying a limited grandfathering period is that a product in the product class imported into, or whose last process of manufacture is performed in, Australia before the GEMS determination comes into force might not be able to be supplied or used for a commercial purpose after the end of that period unless:
  (a) the product complies with the GEMS determination; and
  (b) the model of the product is registered against the GEMS determination.

32 GEMS determinations—not to give preference

The Minister must not make a GEMS determination that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

33 GEMS determinations—consent of participating jurisdictions

(1) Before making a GEMS determination, the Minister must obtain consent to the terms of the determination:
  (a) if a method for obtaining the consent of participating jurisdictions is set out in the agreement (or agreements) referred to in subsection (3)—in accordance with that method; or
  (b) in any other case—from at least two-thirds of the participating jurisdictions.

Note: For an exception to this rule, see subsection 36(3).

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(2) The Commonwealth is a ***participating jurisdiction*** for the purposes of this Act.

(3) A State or Territory is a ***participating jurisdiction*** at a particular time for the purposes of this Act if:

(a) the Commonwealth has agreed with the State or Territory that the State or Territory will be a participating jurisdiction for the purposes of this Act; and

(b) the State or Territory remains a participating jurisdiction for the purposes of this Act at that time, in accordance with the agreement.

34 GEMS determinations—when a GEMS determination comes into force

A GEMS determination comes into force:

(a) 12 months after the day it is made; or

(b) if the determination specifies that it comes into force on another day that is after the day the determination is made—on that other day.

Note: Product classes specified in the GEMS determination will be covered by it from the time it comes into force.

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Division 3—Replacing GEMS determinations

35 Replacing GEMS determinations

Making replacement determinations

(1) The Minister may:

(a) by legislative instrument, revoke a GEMS determination (a ***revoked determination***) that covers one or more product classes; and

(b) make another GEMS determination in accordance with Division 2 that specifies that it replaces the revoked determination.

Note: A GEMS determination made as referred to in paragraph (b) is referred to in this Act as a ***replacement determination*** (see section 11).

(2) The revoked determination ceases to be in force immediately before the replacement determination comes into force.

Note 1: For when a GEMS determination comes into force, see section 34.

Note 2: Product classes specified in the revoked determination will cease to be covered by it from the time it ceases to be in force.

Revoking GEMS determination without making replacement determination

(3) The Minister may, by legislative instrument, revoke a GEMS determination without making a replacement determination, but only if the Minister has obtained consent to the revocation:

(a) if a method for obtaining the consent of participating jurisdictions is set out in the agreement (or agreements) referred to in paragraph 33(3)(a)—in accordance with that method; or

(b) in any other case—from at least two-thirds of the participating jurisdictions.

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(4) A GEMS determination revoked under subsection (3) ceases to be in force at the time specified in the instrument of revocation.

Note: Product classes specified in the GEMS determination will cease to be covered by it from the time it ceases to be in force.

No other power to vary or revoke GEMS determination

(5) Subsection 33(3) of the *Acts Interpretation Act 1901* (which deals with the variation and revocation of instruments) does not apply in relation to a GEMS determination.

36 Whether registrations affected by replacement determination

(1) A replacement determination must specify whichever of the following applies in relation to the registrations of models in product classes that were covered by the revoked determination:

(a) that the replacement determination affects the registration of all models registered against the revoked determination in relation to all of those product classes;

(b) that the replacement determination affects the registration of specified models registered against the revoked determination in relation to one or more of those product classes;

(c) that the replacement determination does not affect the registration of any model registered against the revoked determination in relation to any of those product classes.

(2) If the replacement determination does not affect the registration of a particular model in relation to a product class, the model is taken to be registered against the replacement determination in relation to that product class.

Note: This subsection does not affect when the registration ceases to be in force under subsection 48(2).

(3) Subsection 33(1) (consent of participating jurisdictions to terms of GEMS determination) does not apply in relation to the replacement determination if:

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(a) the determination does not affect the registration of any model in relation to any of those product classes; and
(b) the product class or classes covered by the replacement determination are the same as those that were covered by the revoked determination.

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Division 4—Exempting models from requirements of GEMS determinations

37 Exempting models from requirements of GEMS determinations

(1) The GEMS Regulator may, by legislative instrument, in accordance with regulations (if any) made for the purposes of this subsection, exempt a specified model of a GEMS product from one or more requirements of a GEMS determination in relation to all or specified supplies or uses of products of that model.

Note: Models covered by exemptions must still be registered under Part 5.

(2) The exemption may specify conditions to which the exemption is subject, including the following:

(a) a condition that products of that model be labelled in a specified way in connection with a specified supply;

(b) a condition relating to the supply or commercial use of products of that model.

Example: For paragraph (b), a condition that a supplier be satisfied, before supplying a product of the model, that the product will only be used for a particular purpose.

(3) A person must comply with a condition of an exemption to the extent that it applies to the person.

(4) Regulations made for the purposes of subsection (1) may (without limitation) provide for or in relation to the following:

(a) exemptions to be made only on application by specified persons;

(b) the manner and form of such an application;

(c) the documentation or other information, and any fee, that must accompany such an application;

(d) giving further documentation or information to the GEMS Regulator for the purposes of determining such an application;

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(e) matters to which the GEMS Regulator may or must have regard in exempting a model under subsection (1) or specifying a condition under subsection (2).

(5) The GEMS Regulator must not make an exemption that has the effect of giving preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

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Part 5—Registering models of GEMS products

Division 1—Guide to this Part

38 Guide to this Part

This Part is about registering models of GEMS products on the GEMS Register against GEMS determinations.

Division 2 establishes the GEMS Register and sets out what information is to be contained in the register.

Division 3 is about how models of GEMS products are registered. A manufacturer or importer of a model of a product in Australia, or someone else connected to the supply of the model in Australia, may apply for registration. To be registered against a GEMS determination, the model must comply with the requirements of the determination.

Division 4 is about how registrations may be varied to cover additional models, or to record a change in the identity of the registrant.

Division 5 is about when a registration comes into force, and when it ceases to be in force. Generally, registrations last for 5 years.

Division 6 is about suspending and cancelling registrations. This may happen, for example, if inaccurate information is given with an application, or the model or the registrant does not comply with this Act.

Division 7 sets out a number of requirements for registrants, including requirements to give information and to have products tested.

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Division 8 deals with a variety of matters, including determining when a model complies with a GEMS determination, making and determining applications and notifying applicants of decisions.

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Division 2—GEMS Register

39 Establishment of GEMS Register

(1) The GEMS Regulator must establish and maintain a register to be known as the GEMS Register.

(2) The GEMS Regulator may keep the GEMS Register in any form that he or she considers appropriate.

(3) The GEMS Regulator may publish on the internet part or all of the GEMS Register.

(4) The regulations may specify information contained in the GEMS Register that must be published under subsection (3).

40 Information to be entered in GEMS Register

Information that must be entered in GEMS Register

(1) The following information must be entered in the GEMS Register for each registration of a model or models of GEMS products in relation to a product class:
   (a) the product class;
   (b) the day the registration comes into force;
   (c) the day the registration ceases to be in force;
   (d) a unique identifier for the registration;
   (e) the model identifier for each model covered by the registration;
   (f) the brand or trade mark (if any) used in connection with supplies of those models;
   (g) the names, with the contact details referred to in subsection 42(2), of the registrant and contact person (or persons) in relation to the registration;
   (h) whether the registration is suspended;

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(i) details to identify the relevant GEMS determination against which the model was registered as referred to in subsection 43(1), including the day the determination was made;

(j) if the model is taken to be registered against a replacement determination in accordance with subsection 36(2)—that fact and details to identify the replacement determination, including the day the replacement determination was made;

(k) if the model's registration is affected by a replacement determination—that fact and details to identify the replacement determination, including the day the replacement determination was made;

(l) any information specified in the regulations in relation to that product class.

Other information that may be entered in GEMS Register

(2) The GEMS Regulator may enter in the GEMS Register any other information he or she considers appropriate.

Varying information in the GEMS Register

(3) The GEMS Regulator must vary information contained in the GEMS Register as soon as practicable after becoming aware that the information is no longer correct.

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Division 3—Registering models of GEMS products

41 Registration on application

(1) A person may apply to the GEMS Regulator to register in relation to a product class:

(a) a single model of GEMS products, specified in the application; or

(b) 2 or more models of GEMS products, specified in the application, that are in the same family of models.

Note 1: See section 43 for when the GEMS Regulator may register the model or models.

Note 2: Under subsection 43(3), the applicant must have an appropriate connection to the supply of the model in Australia (for example as an importer or manufacturer).

(2) To avoid doubt, a person may apply to register a model even if there is only one product of that model.

42 Application requirements—contact persons and contact details

Contact persons

(1) The application must contain the name of one or more contact persons for the registration who meet the requirements specified in the regulations for the purposes of this subsection.

Note: The registrant is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

Example: The regulations might specify a requirement that a contact person be one or more of the following:

(a) an individual;

(b) an officer or employee of the applicant;

(c) a person whom the GEMS Regulator is satisfied has an appropriate connection to the supply of the model in Australia.

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Contact details

(2) The application must contain the contact details specified in the regulations for the applicant and contact person (or persons).

Note: For additional requirements relating to applications, see section 64.

43 Registration by the GEMS Regulator

(1) The GEMS regulator must, on application under section 41, ***register*** the model, in relation to the product class, against the relevant GEMS determination for that product class (see section 44), unless subsection (2), (3) or (4) of this section applies.

Note 1: If a replacement determination is made that covers the model but does not affect the model's registration in relation to the product class, the model is taken to be registered against the replacement determination (see subsection 36(2)).

Note 2: For notice of decisions on applications under this Part, see section 67.

(2) The GEMS Regulator must refuse to register a model in relation to a product class if he or she is not satisfied that:

(a) the model complies with the requirements of the relevant GEMS determination referred to in section 44 for that product class; or

(b) if the application is to register 2 or more models that include the model—those models are in the same family of models.

Note: Generally the GEMS determination referred to in paragraph (a) will be the GEMS determination that covers that product class, as in force at the time of making the decision on the application.

(3) The GEMS Regulator must refuse to register a model in relation to a product class if he or she is not satisfied that:

(a) at least one of the following applies:

(i) the applicant manufactures the model;

(ii) the applicant imports the model into Australia;

(iii) the applicant has an appropriate connection to the supply of the model in Australia, determined in accordance with regulations made for the purposes of this paragraph (if any); or

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(b) the applicant meets all other requirements specified in regulations made for the purposes of this paragraph (if any).

Example: For paragraph (b), the regulations might require the person to be registered under a law of the Commonwealth in connection with carrying on business in Australia.

(4) The GEMS Regulator may refuse to register a model in relation to a product class if he or she is satisfied that there are grounds for refusing the application under section 66.

44 Relevant GEMS determination with which model must comply

(1) For the purposes of section 43, the relevant GEMS determination is the GEMS determination covering that product class that is in force at the time of making the decision on the application, unless subsection (2) or (3) applies.

(2) If the application is made:

(a) after a GEMS determination (the ***new determination***) that covers the product class is made; but

(b) before that determination comes into force;

then, unless subsection (3) applies, the relevant GEMS determination is the new determination.

Note: The product class might not be covered by an existing GEMS determination, or the new determination might be a replacement determination.

(3) If:

(a) a GEMS determination (the ***old determination***) that covers the product class is in force at the time the application is made; and

(b) a replacement determination that replaces the old determination has been made but has not come into force at that time; and

(c) the applicant elects under subsection (4) for the application to be determined on the basis that the model complies with the requirements of the old determination for that product class;

the relevant GEMS determination is the old determination.

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(4) The applicant may make an election for the purposes of paragraph (3)(c) in the application under section 41.

45 Conditions

(1) The GEMS Regulator may impose conditions on a model's registration in relation to a product class at any time by written notice given to the registrant.

Note: The registrant is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(1A) A condition of the model's registration must be reasonably appropriate and adapted to giving effect to the purposes of this Act.

(2) The registrant must comply with a condition of the model's registration.

Note: The model's registration may be suspended or cancelled if the registrant breaches a condition of the registration (see sections 49 and 54).

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Division 4—Varying registrations

46 Varying registration to cover additional models

(1) The registrant may apply to the GEMS Regulator to vary a model's registration in relation to a product class to cover one or more additional models of GEMS products.

Note: For requirements relating to applications, see section 64.

(2) The GEMS Regulator must vary the registration in accordance with the application, unless subsection (3) or (4) applies.

Note: For notice of decisions on applications under this Part, see section 67.

(3) The GEMS Regulator must refuse the application if he or she is not satisfied that the varied registration would only cover models that are in the same family of models.

(4) The GEMS Regulator may refuse the application if he or she is satisfied that there are grounds for refusing the application under section 66.

47 Varying registration to change registrant

(1) The registrant (the ***old registrant***) may apply to the GEMS Regulator to vary the model's registration in relation to a product class to specify another person (the ***new registrant***) as the registrant for the registration.

(2) The application must be accompanied by the written consent of the new registrant.

Note: For additional requirements relating to applications, see section 64.

(3) Section 42 (application requirements for registration) applies in relation to the application as if a reference in that section to the applicant were a reference to the new registrant.

(4) The GEMS Regulator must vary the registration in accordance with the application, unless subsection (5) or (6) applies.

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Note: For notice of decisions on applications under this Part, see section 67.

(5) The GEMS Regulator must refuse to vary the registration if he or she is not satisfied that:

(a) at least one of the following applies:

(i) the new registrant manufactures the model;

(ii) the new registrant imports the model into Australia;

(iii) the new registrant has an appropriate connection to the supply of the model in Australia, determined in accordance with regulations made for the purposes of this paragraph (if any); or

(b) the new registrant meets all other requirements specified in regulations made for the purposes of this paragraph (if any).

Example: For paragraph (b), the regulations might require the person to be registered under a law of the Commonwealth in connection with carrying on business in Australia.

(6) The GEMS Regulator may refuse to vary the registration if he or she is satisfied that there are grounds for refusing the application under section 66.

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Division 5—When is a registration in force

48 When is a registration in force

When registration comes into force

(1) A model's registration against a GEMS determination in relation to a product class comes into force at the beginning of the day after the GEMS Regulator decides to register the model against that GEMS determination in relation to that product class under subsection 43(1).

When registration ceases to be in force

(2) A model's registration against a GEMS determination in relation to a product class ceases to be in force at the earliest of the following times:

(a) the beginning of the day after the end of the registration period for the registration (see subsection (3));

(b) the beginning of the day after the registration is cancelled;

(c) if a replacement determination has been made that affects the registration of the model in relation to the product class—the earlier of the following:

(i) the beginning of the day a registration of the model against the replacement determination comes into force;

(ii) the beginning of the day the replacement determination comes into force.

Note: The GEMS determination against which the model is registered at the time the registration ceases to be in force may be different from that in force at the time it was originally registered (see subsection 36(2)).

Registration period—generally 5 years

(3) For the purposes of paragraph (2)(a), the ***registration period*** for a model's registration is 5 years beginning on the day the registration comes into force (subject to subsections (4), (5) and (6)).

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Shorter registration period specified by GEMS Regulator

(4) The registration period for a model's registration ends on an earlier day specified by the GEMS Regulator in the notice of the decision to register the model if the GEMS Regulator specifies such a day in accordance with criteria prescribed by regulations made for the purposes of this subsection.

Note: For notice of decisions on applications under this Part, see section 67.

Longer registration period—model registered before relevant determination in force

(5) If the relevant determination against which the model is registered is a new determination within the meaning of subsection 44(2), the registration period is extended by the number of days in the period:

(a) beginning on the day the registration comes into force; and

(b) ending on the day before the new determination comes into force.

Registration period—effect of suspension of registration

(6) The registration period is extended by the number of days in any period:

(a) beginning on a day a suspension of the registration comes into force; and

(b) ending on the day that suspension ceases to be in force.

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Division 6—Suspending and cancelling registrations

Subdivision A—Suspending registrations

49 Suspending a model's registration

The GEMS Regulator may suspend a model's registration in relation to a product class if:

(a) the GEMS Regulator suspects, on reasonable grounds, that:

(i) the model does not comply with a requirement for that product class of the GEMS determination against which the model is registered; or

(ii) any of the documentation or other information given to the GEMS Regulator at any time in connection with the registration was not accurate at the time it was given; or

(iii) changes have been made to the model so that any test results given in connection with the model's registration no longer accurately reflect the extent to which the model complies with the requirements of the GEMS determination against which the model was registered; or

(iv) the registrant has breached a condition of the registration or of an exemption under section 37 relating to the model; or

(b) the GEMS Regulator is satisfied that the registrant has failed to comply with one or more of the following in relation to the model:

(i) section 55 (notifying GEMS Regulator of changes);

(ii) a notice under section 56 (giving information to GEMS Regulator);

(iii) a notice under section 57 (giving product of model to GEMS Regulator);

(iv) a notice under section 61 (requirement for registrant—testing products or cancelling registration); or

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(c) the GEMS Regulator has, despite reasonable attempts, been unable to contact:
(i) any contact person for the registration; and
(ii) the registrant.

50 Effect of suspension

Each model covered by a suspended registration is taken to not be registered in relation to the product class while the suspension is in force.

51 When is a suspension in force

(1) A suspension comes into force at the time notice of the suspension (the ***suspension notice***) is given to the registrant under section 165.

Note: The registrant is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(2) The suspension notice must specify a day on which the suspension ceases to be in force.

52 Conditions on suspension

(1) The GEMS Regulator may impose conditions on a suspension in the suspension notice.

(2) The registrant must comply with a condition of a suspension.

Note: The model's registration may be cancelled if the registrant breaches a condition of the suspension (see section 54).

53 GEMS Regulator may vary suspension notice

(1) The GEMS Regulator may, if he or she considers it appropriate in the circumstances, vary the suspension notice to do either or both of the following:
(a) specify a different day on which the suspension ceases to be in force;
(b) impose different conditions on the suspension.

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(2) The GEMS Regulator must give the registrant a copy of the suspension notice as varied under subsection (1).

Note: The registrant is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(3) Subsection (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a suspension notice.

Subdivision B—Cancelling registrations

54 Cancelling a model's registration

(1) The GEMS Regulator may cancel a model's registration in relation to a product class if the GEMS Regulator is satisfied that:

(a) the model does not comply with a requirement for that product class of the GEMS determination against which the model is registered; or

(b) the registrant has failed to comply with one or more of the following in relation to the model:

(i) section 55 (notifying GEMS Regulator of changes);

(ii) a notice under section 56 (giving information to GEMS Regulator);

(iii) a notice under section 57 (giving product of model to GEMS Regulator);

(iv) a notice under section 61 (testing products or cancelling registration—belief model non-compliant); or

(c) any of the documentation or other information given to the GEMS Regulator at any time in connection with the registration was not accurate at the time it was given; or

(d) changes have been made to the model so that any test results given in connection with the model's registration no longer accurately reflect the extent to which the model complies with the requirements of the GEMS determination against which the model was registered; or

(e) the registrant has breached a condition of:

(i) the registration; or

(ii) a suspension of the registration; or

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(iii) an exemption under section 37 relating to the model; or

(f) the registration has been suspended, and the GEMS Regulator has, despite reasonable attempts after the suspension, been unable to contact:

(i) any contact person for the registration; and

(ii) the registrant.

(2) The GEMS Regulator must, by written notice given to the registrant, cancel a registration of a model in relation to a product class if the registrant applies for the GEMS Regulator to do so.

Note: The registrant is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(3) A cancellation comes into force at a time specified in the notice given under section 165 or subsection (2) of this section that is after the notice is given.

(4) To avoid doubt, if the registration covers more than one model, the registration is cancelled in relation to each of those models.

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Division 7—Requirements for registrants

Subdivision A—Notifying GEMS Regulator of changes

55 Requirement for registrant to notify GEMS Regulator of changes

(1) The registrant for a model's registration must inform the GEMS Regulator as soon as reasonably practicable after any of the following occurs:

(a) the registrant becomes aware that any of the information entered in the GEMS Register in relation to the registration is incorrect;

(b) circumstances have changed such that the registrant may no longer satisfy the requirements of paragraphs 43(3)(a) and (b) or 47(5)(a) and (b) (appropriate connection to supply of model and other requirements for registrant);

(c) the registrant decides to change a contact person for the registration, or a contact person for the registration no longer satisfies the requirements of regulations made for the purposes of subsection 42(1);

(d) changes have been made to the model so that any test results given in connection with the model's registration no longer accurately reflect the extent to which the model complies with the requirements of the GEMS determination against which the model was registered.

(2) The registrant may inform the GEMS Regulator by written notice or a method specified in the regulations.

Civil penalty provision

(3) The registrant is liable to a civil penalty if the registrant contravenes subsection (1).

Civil penalty: 60 penalty units.

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

Subdivision B—Giving information relating to import, manufacture etc. of products

56 Requirement for registrant to give information relating to import, manufacture etc. of products

Giving information relating to import, manufacture etc. of products

(1) The GEMS Regulator may give the registrant for a registration of a model in relation to a product class a written notice requiring the registrant to give the GEMS Regulator specified information relating to the manufacture, import, supply, or export of products of the model by the registrant.

Example: Information about:

(a) the number of products of the model manufactured in, imported into, supplied in, or exported from, Australia by the registrant during a specified period; or

(b) whether the registrant has ceased manufacturing, importing, supplying or exporting products of the model in, into or from Australia.

(2) The GEMS Regulator may require the registrant to give the specified information on a periodic basis.

Matters to be included in notice

(3) A notice under subsection (1) must also specify the following matters:

(a) the day on which the notice is given;

(b) the name of the registrant;

(c) the model of the GEMS product;

(d) that the information must be given:

(i) within 14 days after the notice is given, or within such longer period as is specified in the notice; or

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(ii) if the information is to be given on a periodic basis—before the time or times worked out in accordance with the notice;

(e) that the GEMS Regulator may suspend the registration under section 49, or cancel the registration under section 54, if the registrant does not comply with the notice.

(4) A notice under subsection (1) must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

(5) This section only applies in relation to a registrant if the registrant is a constitutional corporation.

Subdivision C—Giving product of registered model to GEMS Regulator

57 Requirement for registrant to give product—determining whether model complies with GEMS determination

Giving product of registered model

(1) The GEMS Regulator may give the registrant for a registration of a model in relation to a product class a written notice requiring the registrant to give a product of that model to a specified GEMS inspector.

(2) The power under subsection (1) may only be exercised:

(a) for the purpose of determining whether the model complies with the GEMS determination against which the model is registered; and

(b) if the GEMS Regulator is satisfied that it would not be practical for a GEMS inspector or person authorised to test GEMS products in that product class to purchase the product.

Matters to be included in notice

(3) A notice under subsection (1) must also specify the following matters:

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(a) the day on which the notice is given;
(b) the name of the registrant;
(c) the model of the GEMS product;
(d) the manner in which the GEMS product is to be provided;
(e) that the product must be given within 14 days after the notice is given, or within such longer period as is specified in the notice;
(f) that the GEMS Regulator may suspend the registration under section 49, or cancel the registration under section 54, if the registrant does not comply with the notice.

(4) A notice under subsection (1) must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

Notice not a legislative instrument

(5) A notice under subsection (1) is not a legislative instrument.

58 Requirement for registrant to give product—retention and return of product

Retention etc. of product

(1) If a product is given to a GEMS inspector in accordance with a requirement under subsection 57(1), the GEMS inspector:
(a) may take possession of the product; and
(b) may retain the product (but see subsection (2) of this section); and
(c) must provide a receipt for the product.

Note: The product may be tested under section 126.

Return of product

(2) The GEMS Regulator must take reasonable steps to return the product to the registrant or a contact person for the registration when the earliest of the following happens:

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(a) it is no longer necessary to retain the product for the purposes of determining whether the model complies with the GEMS determination against which it is registered;
(b) it is decided that the product is not to be used in evidence;
(c) the 6-month period after the product was given to the GEMS Regulator ends.

Exception to requirement to return product

(3) Subsection (2):
(a) is subject to any contrary order of a court; and
(b) does not apply if the product:
(i) is forfeited or forfeitable to the Commonwealth; or
(ii) is the subject of a dispute as to ownership.

(4) The GEMS Regulator is not required to take reasonable steps to return the product because of subsection (2) if:
(a) proceedings in respect of which the product may afford evidence were instituted before the end of 6 months after the product was given to the GEMS Regulator, and have not been completed (including an appeal to a court in relation to those proceedings); or
(b) the product may continue to be retained because of an order under section 59; or
(c) the Commonwealth or the GEMS Regulator is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the product.

59 Requirement for registrant to give product—issuing officer may permit product to be retained

(1) The GEMS Regulator may apply to an issuing officer for an order permitting the retention of a product given in accordance with subsection 57(1) for a further period if proceedings in respect of which the product may afford evidence have not commenced before the end of:

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(a) 6 months after the product was given; or
(b) a period previously specified in an order of an issuing officer under this section.

(2) Before making the application, the GEMS Regulator must:
(a) take reasonable steps to discover who has an interest in the retention of the product; and
(b) if it is practicable to do so, give notice of the proposed application to each person whom the GEMS Regulator believes to have such an interest.

Order to retain product

(3) The issuing officer may order that the product continue to be retained for a period specified in the order if the issuing officer is satisfied that it is necessary for the product to continue to be retained:
(a) for the purposes of determining whether the model of the product complies with the GEMS determination against which it is registered; or
(b) for the purposes of an investigation as to whether a compliance obligation has been contravened; or
(c) to enable evidence of a contravention mentioned in paragraph (b) to be secured for the purposes of a prosecution or an action to obtain a civil penalty order under the Regulatory Powers Act.

(4) The period specified must not exceed 3 years.

Powers conferred personally

(5) A power conferred on an issuing officer by this section is conferred on the issuing officer:
(a) in a personal capacity; and
(b) not as a court or a member of a court.

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Powers need not be accepted

(6) The issuing officer need not accept the power conferred.

Protection and immunity

(7) An issuing officer exercising a power conferred by this section has the same protection and immunity as if the issuing officer were exercising the power:
  (a) as the court of which the issuing officer is a member; or
  (b) as a member of the court of which the issuing officer is a member.

60 Requirement for registrant to give product—disposal of product

(1) The GEMS Regulator may dispose of a product given in accordance with subsection 57(1) if:
  (a) the GEMS Regulator has taken reasonable steps to return the product to the registrant or a contact person for the registration; and
  (b) either:
    (i) the GEMS Regulator has been unable to locate both the registrant and any contact person for the registration; or
    (ii) if the GEMS Regulator has been able to locate the registrant or any contact person for the registration—any person so located has refused to take possession of the product.

(2) The GEMS Regulator may dispose of the product in such manner as the GEMS Regulator thinks appropriate.

Note: If the operation of this section would result in an acquisition of property otherwise than on just terms, see section 174.

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Subdivision D—Testing products or cancelling registration

61 Requirement for registrant—testing products or cancelling registration

(1) The GEMS Regulator may give a registrant for a registration of a model in relation to a product class a written notice requiring the registrant to take the action specified in subsection (2) if the GEMS Regulator believes, on reasonable grounds, that the model does not comply with the GEMS determination against which it is registered.

Note: The registrant is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(2) The registrant must either:

(a) apply under subsection 54(2) to cancel the registration of the model within a period specified in the notice; or

(b) do both of the following within a period specified in the notice:

(i) arrange for further testing and examination (at the registrant's own expense) of one or more specified products of the model, or products of another model that is covered by the same registration, as specified in the notice;

(ii) notify the GEMS Regulator of the results of the test or examination.

(3) A notice under subsection (1) must also specify the following matters:

(a) the day on which the notice is given;

(b) the name of the registrant for the registration of the model in relation to the product class;

(c) the model of the GEMS product;

(d) the manner in which the GEMS Regulator believes that the model does not comply with the GEMS determination against which the model is registered;

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(e) for the purposes of paragraph (2)(b)—the manner in which the specified product or products must be tested or examined, including any or all of the following:

(i) the matters in relation to which the product or products must be tested;

(ii) the methods for testing;

(iii) any specified persons who are required to examine or test the product or products;

(f) that the GEMS Regulator may suspend the registration under section 49, or cancel the registration under section 54, if the registrant does not comply with the notice.

(4) A notice given under subsection (1) is not a legislative instrument.

Subdivision E—Notifying other persons of suspension or cancellation of registration

62 Requirement for registrant to notify other persons of suspension or cancellation of registration

(1) The registrant for a registration must take the action mentioned in subsection (2) as soon as practicable after the registrant is given notice of a suspension or cancellation of the registration under subsection 54(2) or section 165.

(2) The registrant must take all reasonable steps to ensure that any person the registrant is aware might supply products of the models covered by the registration is informed of the suspension or cancellation.

(3) The registrant is liable to a civil penalty if the registrant contravenes subsection (1).

Civil penalty: 60 penalty units.

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

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Division 8—Miscellaneous

63 Requirements for determining whether model complies with GEMS determination

(1) A model of a GEMS product in a product class complies with a GEMS determination if the requirements specified by the GEMS Regulator under subsection (2) for determining such compliance are met.

(2) The GEMS Regulator may, by legislative instrument, specify requirements for a product class for the purposes of subsection (1).

(3) Without limiting subsection (2), the specified requirements for a product class may relate to the following:
  (a) the number of products of a model in that class that must be tested and examined to determine the model's compliance;
  (b) the results that must be achieved for that product class in testing and examining those products.

64 Applications—basic requirements

General requirements

(1) An application under this Part:
  (a) must be made in the approved form; and
  (b) for an application under section 41 to register one or more models of GEMS product—must be accompanied by the fee imposed under the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* for such an application; and
  (c) for any other application—must be accompanied by the fee specified by the GEMS Regulator by legislative instrument.

(2) To be in the approved form for the purposes of paragraph (1)(a), the application must:

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(a) be made in the manner and form approved in writing by the GEMS Regulator; and

(b) include any documentation or other information required by the GEMS Regulator by the form approved for the purposes of paragraph (a).

Examples: For the purposes of paragraph (2)(b), the requirements to be imposed may include any (or all) the following:

(a) test results for a model must accompany the application;

(b) such a test must be conducted by a person authorised to test GEMS products in the relevant product class;

(c) sample labels must accompany the application;

(d) documentation or information (including any statement) supplied with the application must be verified by statutory declaration.

(3) An approved form made for the purposes of paragraph (1)(a), or a legislative instrument made for the purposes of paragraph (1)(c), may specify different documentation or other information, or fees, as the case requires, for different:

(a) product classes; and

(b) classes of applications; and

(c) classes of models.

Additional provisions about fees

(4) A fee in relation to an application under this Part is payable by the applicant to the GEMS Regulator on behalf of the Commonwealth.

(5) The GEMS Regulator may, despite anything in this Act or the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*, in a particular case or in particular classes of cases:

(a) waive or reduce a fee that would otherwise be payable in relation to an application under this Part; or

(b) refund the whole or a part of a fee that would otherwise be payable in relation to an application under this Part.

(6) A fee that is payable in relation to an application under this Part (other than an application under section 41 to register one or more models) must not be such as to amount to taxation.

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Note: The *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* imposes fees for applications under section 41 as taxes.

65 Applications—GEMS Regulator may request further information

(1) The GEMS Regulator may, for the purposes of determining an application under this Part, give the applicant a written notice requesting the applicant to give the GEMS Regulator further specified documentation or information by the time specified in the notice.

Note: The registrant or applicant for a registration is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(2) Without limiting subsection (1), the GEMS Regulator may request the applicant to give the GEMS Regulator results of testing, in relation to a model or models to which the application relates, that has been conducted by a person who is authorised to test GEMS products in that product class.

(3) The GEMS Regulator may require the documentation or information to be verified by statutory declaration.

Note: Failure to comply with a request under this section may result in the application being refused (see section 66).

66 Grounds for refusing an application

(1) The following are grounds for refusing an application under this Part:

(a) the application does not comply with section 64 (basic requirements for applications);

(b) the applicant has not given the GEMS Regulator further documentation or information by the time specified in a notice given under section 65 in relation to the application;

(c) the documentation or other information provided in the application, or as requested by a notice under section 65, is not accurate.

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(2) It is also a ground for refusing an application to register a model under section 41, or to vary a registration under section 47, that the application does not comply with section 42 (including as that section applies because of subsection 47(3)).

Note: Section 42 contains requirements for registration applications relating to contact persons and contact details.

(3) It is also a ground for refusing an application to register a model under section 41, or to vary a registration under section 47, that the GEMS Regulator is satisfied a person covered by subsection (4) has:

(a) contravened a provision of this Act; or

(b) breached a condition of a model's registration under this Act; or

(c) been the registrant for a registration of a model under this Act that has been:

(i) suspended; or

(ii) cancelled (other than on application by the registrant).

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(4) The persons covered by this subsection are as follows:

(a) for an application under section 41—the applicant;

(b) for an application under section 47—the new registrant;

(c) in any case—a contact person nominated in the application;

(d) if the applicant or new registrant referred to in paragraph (a) or (b) is a body corporate—any director, officer or shareholder of the body corporate who participates, or is to participate, in the management of the affairs of the body corporate.

67 Notice of decisions

(1) The GEMS Regulator must give the applicant written notice of the GEMS Regulator's decision on an application under this Part.

Note 1: See also section 165 for additional requirements for reviewable decisions.

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Note 2: The registrant or applicant for a registration is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(2) If the application is under section 47 (varying registration to change registrant), the notice must also be given to the new registrant.

(3) The GEMS Regulator must notify the applicant for an application to register a model under section 41, or to vary a registration under section 46 or 47, that the application is still under consideration if the GEMS Regulator has not made a decision on the application within 42 days of receiving it.

(4) The period of 42 days is extended, for each notice requesting further information under section 65, by the number of days in the period:

(a) beginning on the day the notice was given; and

(b) ending on the day the information is received.

(5) A failure to comply with the requirements of this section does not affect the validity of a decision under this Part.

68 Notice given to contact person taken to be given to applicant or registrant

If a notice that a person may or must give under this Act to the applicant or registrant for a registration is given to a contact person for the registration, it is taken to have been given to the applicant or registrant.

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Part 6—The GEMS Regulator

Division 1—Guide to this Part

69 Guide to this Part

This Part establishes the office of the GEMS Regulator and defines the functions and powers of the GEMS Regulator.

Division 2 provides that the GEMS Regulator must be an SES employee occupying a position in the Department.

The main functions of the GEMS Regulator, as set out in Division 3, are to administer the Act and maintain the GEMS Register. The GEMS Regulator can also assist in the development of GEMS determinations.

Division 4 enables State and Territory laws to confer functions on the GEMS Regulator.

Division 5 gives the GEMS Regulator facilitative powers and functions, including the capacity to make arrangements with Commonwealth, State and Territory agencies and to engage consultants, and the power of delegation.

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Division 2—Who is the GEMS Regulator

70 The GEMS Regulator

(1) The Secretary must, by writing, designate a position in the Department as the position of GEMS Regulator.

Note: For creation of positions, see section 77 of the *Public Service Act 1999*.

(2) The position of GEMS Regulator can only be occupied by an SES employee.

(3) The ***GEMS Regulator*** is the SES employee who occupies that position.

(4) An instrument under subsection (1) is not a legislative instrument.

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Division 3—Functions of GEMS Regulator under this Act

71 Functions of the GEMS Regulator under this Act

The GEMS Regulator has the following functions:

(a) to administer this Act;

(b) to maintain the GEMS Register;

(c) to assist in developing GEMS determinations, including by undertaking or commissioning research in relation to:

(i) GEMS determinations; or

(ii) product classes that are, or could be, covered by a GEMS determination;

(d) to provide information and advice in relation to:

(i) GEMS determinations; and

(ii) product classes that are, or could be, covered by a GEMS determination; and

(iii) the operation of this Act;

(e) to monitor and enforce compliance with this Act;

(f) to review and evaluate the operation of this Act;

(g) such other functions as are conferred on the GEMS Regulator by this Act or any other law of the Commonwealth.

Note 1: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

Note 2: Other functions may be conferred on the GEMS Regulator by State or Territory law (see Division 4).

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Division 4—Conferral of functions etc. on GEMS Regulator by State and Territory laws

72 Commonwealth consent to conferral of functions etc. on GEMS Regulator by State and Territory laws

(1) A law of a State or Territory may confer powers or functions, or impose duties, on the GEMS Regulator.

Note: Section 74 sets out when such a law imposes a duty on the GEMS Regulator.

(2) Subsection (1) does not authorise the conferral of a power or function, or the imposition of a duty, by a law of a State or Territory to the extent to which:

(a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the GEMS Regulator; or

(b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

(3) The GEMS Regulator cannot exercise a power, or perform a duty or function, under a law of a State or Territory without the written approval of the Minister.

73 How duty is imposed on GEMS Regulator by State and Territory laws

Application

(1) This section applies if a law of a State or Territory purports to impose a duty on the GEMS Regulator.

Note: Section 74 sets out when such a law imposes a duty on the GEMS Regulator.

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State or Territory legislative power sufficient to support duty

(2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:

(a) imposing the duty is within the legislative powers of the State or Territory concerned; and

(b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the GEMS Regulator.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 72 to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not

(3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.

(4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.

(5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:

(a) is within the legislative powers of the Commonwealth; and

(b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the GEMS Regulator.

(6) Subsections (1) to (5) do not limit section 72.

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74 When State and Territory laws impose a duty on GEMS Regulator

For the purposes of sections 72 and 73, a law of a State or Territory imposes a duty on the GEMS Regulator if:

(a) the law confers a power or function on the GEMS Regulator; and

(b) the circumstances in which the power or function is conferred give rise to an obligation on the GEMS Regulator to exercise the power or to perform the function.

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Division 5—General provisions relating to GEMS Regulator

75 Powers of the GEMS Regulator

The GEMS Regulator has power to do all things necessary or convenient to be done in connection with the performance of the GEMS Regulator's functions.

76 GEMS Regulator has privileges and immunities of the Crown

The GEMS Regulator has the privileges and immunities of the Crown.

Note: The GEMS Regulator is an SES employee in the Department and does not have a legal identity separate from the Commonwealth (see section 70).

77 GEMS Regulator may charge for services

(1) The GEMS Regulator may charge fees for services provided by, or on behalf of, the GEMS Regulator in the performance of his or her functions.

(2) A fee charged under subsection (1) must not be such as to amount to taxation.

78 Arrangements with other agencies

The GEMS Regulator may make an arrangement with an agency of the Commonwealth, a State or a Territory for the services of officers or employees of the agency to be made available to assist the GEMS Regulator in performing his or her functions or duties, or exercising his or her powers.

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79 Consultants

The GEMS Regulator may, on behalf of the Commonwealth, engage consultants to assist in the performance of the GEMS Regulator's functions.

80 Delegation

(1) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions under this Act (other than his or her functions or powers as a GEMS inspector) to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.

Note: The GEMS Regulator is made a GEMS inspector by force of section 83.

(2) However, the GEMS Regulator must not delegate a power or function, under subsection (1), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.

(3) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

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Part 7—Monitoring and investigation

Division 1—Guide to this Part

81 Guide to this Part

This Part is about ensuring compliance with this Act.

Division 2 provides for officers of Commonwealth, State or Territory agencies to be appointed as GEMS inspectors.

Division 3 authorises GEMS inspectors to enter public areas of premises used in connection with the supply of GEMS products. Inspectors may purchase GEMS products there (and exercise certain other powers) in order to investigate compliance with this Act.

Division 4 applies the Regulatory Powers Act to allow GEMS inspectors to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers there under that Act, for the purposes of determining:

(a) whether this Act has been, or is being, complied with; or
(b) whether information given in compliance or purported compliance with this Act is correct.

Division 5 applies the Regulatory Powers Act to allow GEMS inspectors to enter premises under an investigation warrant or with consent of the occupier and to exercise investigation powers there under that Act, for the purposes of gathering material that relates to the contravention of offence and civil penalty provisions in this Act.

Division 7 requires a person, on demand, to give a GEMS inspector information, or to appear for an examination, in relation to an investigation, or to prevent a contravention of this Act.

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Division 8 deals with the powers of a GEMS inspector to test, examine or sample GEMS products to determine whether the products, or models of the products, comply with this Act (including any relevant GEMS determination).

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Division 2—GEMS inspectors

82 Appointment of GEMS inspectors

(1) The GEMS Regulator may, in writing, appoint an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory as a GEMS inspector for the purposes of this Part.

Prerequisites to appointment

(2) The GEMS Regulator must not appoint a person as a GEMS inspector unless the GEMS Regulator is satisfied that the person has suitable training or experience to properly exercise the powers of a GEMS inspector.

(3) The GEMS Regulator must not appoint an officer or employee of an agency as a GEMS inspector without the agreement of:
  (a) if the agency is an agency of the Commonwealth—the agency; and
  (b) if the agency is an agency of a State or Territory—the State or Territory.

GEMS inspector to comply with directions

(4) A GEMS inspector must, in exercising powers as such, comply with any directions of the GEMS Regulator.

(5) If a direction is given under subsection (4) in writing, the direction is not a legislative instrument.

83 GEMS Regulator is an inspector

The GEMS Regulator is a GEMS inspector by force of this section.

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Division 3—Inspecting public areas of GEMS business premises

86 Inspection powers in public areas of GEMS business premises

(1) A GEMS inspector may enter a public area of GEMS business premises when the premises are open to the public and exercise the following powers for a purpose referred to in subsection (2):

(a) the power to inspect GEMS products;

(b) the power to purchase any GEMS product that is available for sale;

(c) the power to inspect or collect written information, advertising or any other document that is available, or made available, to the public in relation to GEMS products;

(d) the power to discuss product features of any GEMS products with any person;

(e) the power to observe practices relating to the supply of GEMS products.

(2) A GEMS inspector may only exercise a power under subsection (1) for one or more of the following purposes:

(a) determining whether a provision of this Act has been, or is being, complied with;

(b) determining whether information given in compliance or purported compliance with a provision of this Act is correct;

(c) investigating a possible contravention of a compliance obligation.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(3) Subsection (1) does not affect any right of the occupier of the premises to refuse to allow a GEMS inspector to enter, or remain on, the premises.

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(4) Subsection (1) does not limit the powers of a GEMS inspector under the Regulatory Powers Act or any other power of a person to enter a public area of GEMS business premises.

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Division 4—Monitoring

87 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) a provision of this Act; or

(b) 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.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note 1: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

Note 2: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

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

Authorised applicant

(4) For the purposes of Part 2 of the Regulatory Powers Act, a GEMS inspector is an authorised applicant in relation to the provisions

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mentioned in subsection (1) and the information mentioned in subsection (2).

Authorised person

(5) For the purposes of Part 2 of the Regulatory Powers Act, a GEMS inspector is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

(6) If a person is an issuing officer for the purposes of this Act, then, for the purposes of Part 2 of the Regulatory Powers Act, the person is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Relevant chief executive

(7) For the purposes of Part 2 of the Regulatory Powers Act, the GEMS Regulator is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

(8) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions as the relevant chief executive under Part 2 of the Regulatory Powers Act, in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.

(9) However, the GEMS Regulator must not delegate a power or function, under subsection (8), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.

(10) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

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Identity card for the GEMS Regulator

(11) Despite subsection 35(1) of the Regulatory Powers Act, the Secretary must issue an identity card to the GEMS Regulator.

Relevant court

(12) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 2 of the Regulatory Powers Act, the court is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Person assisting

(13) For the purposes of Part 2 of the Regulatory Powers Act, a GEMS inspector may be assisted by other persons in exercising powers or performing functions or duties under that Part in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Use of force in executing a warrant

(14) 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) and the information mentioned in subsection (2):

(a) a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances; and

(b) a person assisting a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

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

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Division 5—Investigation

88 Investigation powers

Provisions subject to investigation

(1) Each compliance obligation is subject to investigation under Part 3 of the Regulatory Powers 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 compliance obligation, there are no related provisions.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act, a GEMS inspector is an authorised applicant in relation to evidential material that relates to a compliance obligation.

Authorised person

(4) For the purposes of Part 3 of the Regulatory Powers Act, a GEMS inspector is an authorised person in relation to evidential material that relates to a compliance obligation.

Issuing officer

(5) If a person is an issuing officer for the purposes of this Act, then, for the purposes of Part 3 of the Regulatory Powers Act, the person is an issuing officer in relation to evidential material that relates to a compliance obligation.

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Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act, the GEMS Regulator is the relevant chief executive in relation to evidential material that relates to a compliance obligation.

(7) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions as the relevant chief executive under Part 3 of the Regulatory Powers Act, in relation to evidential material that relates to a compliance obligation, to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.

(8) However, the GEMS Regulator must not delegate a power or function, under subsection (7), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.

(9) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

Identity card for the GEMS Regulator

(10) Despite subsection 76(1) of the Regulatory Powers Act, the Secretary must issue an identity card to the GEMS Regulator.

Relevant court

(11) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 3 of the Regulatory Powers Act, the court is a relevant court in relation to evidential material that relates to a compliance obligation.

Person assisting

(12) For the purposes of Part 3 of the Regulatory Powers Act, a GEMS inspector may be assisted by other persons in exercising powers or performing functions or duties under that Part in relation to evidential material that relates to a compliance obligation.

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Use of force in executing a warrant

(13) 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 compliance obligation:

(a) a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances; and

(b) a person assisting a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

(14) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a compliance obligation, extends to every external Territory.

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Division 7—Giving GEMS information to GEMS inspectors

122 Meaning of *person who has GEMS information*

A person is a ***person who has GEMS information*** if the GEMS Regulator believes, on reasonable grounds, that the person is capable of giving information, or producing a document, relevant for the purposes of investigating or preventing:

(a) a possible contravention of a provision of this Act; or

(b) a possible offence against this Act, or against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

123 GEMS Regulator may require a person to provide information

(1) The GEMS Regulator may give a written notice to a person who has GEMS information requiring the person to:

(a) give to a GEMS inspector specified in the notice any information that is specified in the notice; or

(b) produce to a GEMS inspector specified in the notice any document (or part of a document) that is specified in the notice.

Matters to be included in notice

(2) The notice must also specify:

(a) the day on which the notice is given; and

(b) the person to whom the notice is given; and

(c) the manner in which the information is to be given or the document produced; and

(d) that the information is to be given, or the document produced, within 14 days after the notice is given, or within such longer period as is specified in the notice; and

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(e) that the person may commit an offence if the person does not comply with the notice.

(3) The notice must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

Offence for failing to comply with a notice

(4) A person commits an offence if:
(a) the person is required to give information or produce a document to a GEMS inspector under subsection (1); and
(b) the person does not give the GEMS inspector the information or produce the document within the period specified in the notice.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

124 GEMS Regulator may require a person to appear before a GEMS inspector

(1) The GEMS Regulator may give a written notice to a person who has GEMS information requiring the person to appear before the GEMS inspector specified in the notice:
(a) to answer any questions put by the GEMS inspector; and
(b) to produce to the GEMS inspector any documents that are referred to in the notice.

(2) The notice must also specify:
(a) the day on which the notice is given; and
(b) the person to whom the notice is given; and
(c) the time and place at which the person is to appear; and
(d) that the person may commit an offence if the person does not comply with the notice.

The time referred to in paragraph (c) must be more than 14 days after the notice is given.

(3) The notice must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (false or misleading information or documents).

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Offence for failing to appear

(4) A person commits an offence if:

(a) the person is required to appear before a GEMS inspector under subsection (1); and

(b) the person does not appear before the GEMS inspector.

Penalty for contravention of this subsection: Imprisonment for 6 months or 30 penalty units, or both.

Offence for failing to answer questions or produce a document

(5) A person commits an offence if:

(a) the person is required under subsection (1) to appear before a GEMS inspector; and

(b) when appearing before the GEMS inspector, the person does not:

(i) answer a question put by the GEMS inspector; or

(ii) produce a document to the GEMS inspector as required by notice given under that subsection.

Penalty for contravention of this subsection: Imprisonment for 6 months or 30 penalty units, or both.

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Division 8—Testing compliance of GEMS products

125 Authorising persons to test GEMS products

A person is ***authorised to test GEMS products*** in a product class for the purpose of determining whether a GEMS product or model of GEMS products in that product class complies with a provision of this Act if the person satisfies the requirements specified for that product class by the GEMS Regulator, by legislative instrument, for the purposes of this section.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

126 Testing GEMS products etc.

(1) A person who is authorised to test GEMS products in a product class may test, examine and sample any of the following GEMS products in that product class for the purpose of determining whether the product, or a model of the product, complies with a provision of this Act:

(a) a GEMS product purchased by the person;

(b) a GEMS product given to the GEMS Regulator under section 57 (requirement for registrant to give product—determining whether model complies with GEMS determination);

(c) a GEMS product purchased by a GEMS inspector under section 86 (inspection powers in public areas of GEMS business premises);

(d) a GEMS product seized under Part 3 of the Regulatory Powers Act, as that Part applies under section 88 of this Act.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(2) Without limiting subsection (1), the power under that subsection:

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(a) includes the power to test, examine and sample a GEMS product in accordance with requirements specified under section 63; and

(b) may be exercised in relation to a GEMS product even though that might result in:

(i) damage to, or the destruction of, the product or a package containing the product; or

(ii) the reduction in the value of the product or a package containing the product.

(3) However, if the GEMS product is covered by paragraph (1)(b) or (d), the person must not be more destructive in exercising the power under subsection (1) in relation to the product than is reasonable for the purpose of determining whether the product, or a model of the product, complies with a provision of this Act.

Note: If the operation of this section would result in an acquisition of property otherwise than on just terms, see section 174.

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Part 8—Enforcement

Division 1—Guide to this Part

128 Guide to this Part

This Part provides for a range of actions to be taken to enforce this Act.

Division 2 provides that a civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act. A relevant court may order a person contravening a civil penalty provision to pay to the Commonwealth a pecuniary penalty.

Division 3 provides that infringement notices under Part 5 of the Regulatory Powers Act may be issued for suspected contraventions of civil penalty provisions of this Act. Such a notice allows a person to pay an amount as an alternative to having court proceedings brought against the person for the contravention.

Division 4 provides that undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act. If a person gives such an undertaking, the undertaking may be enforced by a court order.

Division 5 provides that injunctions (including interim injunctions) under Part 7 of the Regulatory Powers Act may be used to restrain a person from contravening a provision of this Act or to compel compliance with a provision of this Act.

Division 6 allows the GEMS Regulator to publicise details of enforcement action taken under the Regulatory Powers Act, including the names of persons in relation to whom the action has been taken. In addition, certain adverse decisions relating to the

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registration of models of GEMS products may be publicised, including the names of registrants.

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Division 2—Civil penalties

129 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of 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 GEMS Regulator is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 4 of the Regulatory Powers Act, the court is a relevant court in relation to the civil penalty provisions of this Act.

Exceptions etc. to civil penalty provisions—burden of proof

(4) Section 96 (Exceptions etc. to civil penalty provisions—burden of proof) of the Regulatory Powers Act does not apply in relation to proceedings for a civil penalty order for a contravention of a civil penalty provision under Part 3 of this Act.

Extension to external Territories

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

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Liability of Crown

(6) To avoid doubt, subsection 7(2) does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to this Act.

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Division 3—Infringement notices

130 Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, a GEMS inspector is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act, the GEMS Regulator is the relevant chief executive in relation to the provisions mentioned in subsection (1).

(4) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions as the relevant chief executive under Part 5 of the Regulatory Powers Act, in relation to the provisions mentioned in subsection (1), to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.

(5) However, the GEMS Regulator must not delegate a power or function, under subsection (4), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.

(6) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

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Additional matters to be included in infringement notices

(7) In addition to the matters included in subsection 104(1) of the Regulatory Powers Act, an infringement notice given in relation to an alleged contravention of a provision mentioned in subsection (1) must also state that the giving of the notice and the payment of the amount payable under the notice may be publicised under section 162 of this Act.

Extension to external Territories

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

Liability of Crown

(9) To avoid doubt, subsection 7(2) does not prevent the Crown from being liable to be given an infringement notice under Part 5 of the Regulatory Powers Act, as that Part applies in relation to this Act.

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Division 4—Enforceable undertakings

131 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 1: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

Note 2: 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 GEMS Regulator is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 6 of the Regulatory Powers Act, the court is a relevant court in relation to the provisions mentioned in subsection (1).

Other undertakings

(4) The GEMS Regulator may accept a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention by the person of a provision mentioned in subsection (1), pay another person an amount worked out in accordance with the undertaking. The undertaking must be expressed to be an undertaking under this subsection.

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(5) The power in subsection (4) is in addition to the power of the GEMS Regulator under subsection 114(1) of the Regulatory Powers Act.

(6) Part 6 of the Regulatory Powers Act, other than subsection 114(1), applies to an undertaking accepted under subsection (4) of this section as if it were an undertaking accepted under subsection 114(1) of the Regulatory Powers Act.

Extension to external Territories

(7) 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.

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Division 5—Injunctions

132 Injunctions

Enforceable provisions

(1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is:

(a) an offence against Part 3 or 5 of this Act; or

(b) a civil penalty provision of Part 3 or 5 of this Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, the GEMS Regulator is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 7 of the Regulatory Powers Act, the court is a relevant court in relation to the provisions mentioned in subsection (1).

Consent injunctions

(4) A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) by consent of all the parties to proceedings brought under that Part, whether or not the court is satisfied that section 121 of that Act applies.

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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.

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Division 6—Publicising offences, contraventions and adverse decisions

162 GEMS Regulator may publicise certain offences, contraventions and adverse decisions

(1) The GEMS Regulator may publicise, in any way he or she thinks appropriate, any or all of the following:

(a) that a person has been convicted of an offence against this Act, the nature of the conduct constituting the offence, and the person's name;

(b) that a civil penalty order under the Regulatory Powers Act has been made against a person for contravening a civil penalty provision of this Act, the nature of the conduct constituting the contravention, and the person's name;

(c) that a person has been given an infringement notice, in relation to a civil penalty provision of this Act, under section 103 of the Regulatory Powers Act, the civil penalty provision of this Act that is believed to have been contravened, the nature of the conduct constituting the alleged contravention, and the person's name;

(d) that a person has paid the amount stated in such an infringement notice;

(e) that an undertaking, in relation to this Act, has been accepted under subsection 114(1) of the Regulatory Powers Act (including because of subsection 131(6) of this Act), the terms of the undertaking, and the person's name;

(f) that an order has been made against a person under subsection 115(2) of the Regulatory Powers Act in relation to a breach of such an undertaking, the terms of the order and the person's name;

(g) that an injunction, in relation to this Act, under section 121 of the Regulatory Powers Act restraining a person from engaging in conduct, or requiring a person to do an act or

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thing, has been granted or varied, the nature of the conduct, act or thing, and the person's name;

(h) that a decision has been made to do one or more of the following:

(i) impose or vary the conditions on a model's registration in relation to a product class;

(ii) suspend a model's registration in relation to a product class under section 49;

(iii) impose or vary the conditions on a suspension of a model's registration in relation to a product class under section 52 or 53;

(iv) cancel a model's registration in relation to a product class under section 54;

(i) the reasons for a decision referred to in paragraph (h);

(j) the name of the registrant for a registration referred to in paragraph (h).

Note 1: This subsection constitutes an authorisation for the purposes of other laws, such as the *Privacy Act 1988*.

Note 2: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(2) This Division does not:

(a) limit the power of the GEMS Regulator or anyone else to publicise a matter or a person's name; or

(b) prevent anyone else from publicising a matter or a person's name; or

(c) affect any obligation (however imposed) on anyone to publicise a matter or a person's name.

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Part 9—Reviewing decisions

Division 1—Guide to this Part

163 Guide to this Part

This Part is about reviewing some decisions made under this Act (reviewable decisions). These include refusing to register a model of a GEMS product or to vary a model's registration, or suspending or cancelling a registration.

Reviewable decisions (other than those made by the GEMS Regulator personally) can be reviewed by the GEMS Regulator by way of an internal review, on the application of certain affected persons.

Reviewable decisions made by the GEMS Regulator personally or on an internal review can be reviewed by the Administrative Appeals Tribunal, on the application of certain affected persons.

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Division 2—Reviewing decisions

164 Persons affected by reviewable decisions

Column 1 of the table sets out each person ***affected*** by a reviewable decision. Column 2 of the tables sets out the ***reviewable decision*** by which the person is affected.

Persons affected by reviewable decisions

Item	Person *affected*	*Reviewable decision*
1	A person who applies to register a model of a GEMS product in relation to a product class.	A decision by the GEMS Regulator under section 43 to refuse to register the model
2	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under section 45 to impose conditions, or to vary the conditions imposed, on the registration
3	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under section 46 to refuse to vary the registration to cover one or more additional models of GEMS products
4	The following persons: (a) the registrant for a registration of a model in relation to a product class; (b) the new registrant referred to in section 47	A decision by the GEMS Regulator under section 47 to refuse to vary the registration to specify the new registrant as the registrant for the registration
5	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under subsection 48(4) to specify an earlier day on which the registration period for the registration ends
6	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under section 49 to suspend the registration

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Persons affected by reviewable decisions		
Item	**Person *affected***	***Reviewable decision***
7	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under section 52 to impose conditions on a suspension of the registration
8	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under section 53 to vary, or refuse to vary, a suspension notice in relation to the registration
9	The registrant for a registration of a model in relation to a product class	A decision by the GEMS Regulator under subsection 54(1) to cancel the registration

165 Notification of decisions and review rights

(1) As soon as practicable after making a reviewable decision, the person who made the decision must cause a written notice to be given to the person affected by the decision, containing:

(a) the terms of the decision; and

(b) the reasons for the decision; and

(c) a statement setting out particulars of the person's review rights.

Note 1: If the reviewable decision relates to an application under Part 5, the requirements under this subsection are in addition to those under section 67.

Note 2: A registrant or applicant for a registration is taken to have been given a notice under this Act if the notice is given to a contact person for the registration (see section 68).

(2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

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166 Internal review

(1) A person affected by a reviewable decision (other than a decision made by the GEMS Regulator personally) may apply in writing to the GEMS Regulator for review (the ***internal review***) of the decision.

(2) An application for internal review must be made within:
  (a) 30 days after the day on which the decision first came to the notice of the applicant; or
  (b) such further period (if any) as the GEMS Regulator allows (either before or after the end of that period).

(3) The GEMS Regulator must, on receiving an application, review the reviewable decision.

(4) The GEMS Regulator may:
  (a) make a decision affirming, varying or revoking the reviewable decision; and
  (b) if the GEMS Regulator revokes the decision, make such other decision as the GEMS Regulator thinks appropriate.

167 Review of decisions by Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions:
  (a) a reviewable decision made by the GEMS Regulator personally;
  (b) an internal review decision made by the GEMS Regulator under subsection 166(4).

(2) An application under subsection (1) may be made only by, or on behalf of, a person affected by the reviewable decision.

(3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

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Part 10—Protecting information

Division 1—Guide to this Part

168 Guide to this Part

This Part is about protecting information (protected information) obtained by or disclosed to persons in connection with this Act.

Disclosing protected information is an offence if it might substantially prejudice the commercial interests of a person, and the disclosure is not authorised by this Part.

The ability of courts and tribunals to require the disclosure of protected information is also limited by this Part.

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Division 2—Protecting information

169 Offence—Disclosing commercially sensitive information

Offence

(1) A person commits an offence if:
  (a) the person discloses information to another person; and
  (b) the information is protected information; and
  (c) there is a risk that the disclosure might substantially prejudice the commercial interests of a third person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Exception—authorised disclosure

(2) Subsection (1) does not apply if the disclosure referred to in paragraph (1)(a) is authorised by section 170 (authorised disclosures).

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

*Meaning of **protected information***

(3) ***Protected information*** is information that has been disclosed to, or obtained by, a person in the course of the person performing a function or duty, or exercising a power, under or in relation to this Act.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

170 Authorised disclosures

(1) A person may disclose protected information if:
  (a) the disclosure is made for the purposes of:
    (i) performing a duty or function, or exercising a power, under or in relation to this Act; or

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(ii) enabling another person to perform duties or functions, or exercise powers, under or in relation to this Act; or

(iii) assisting in the administration or enforcement of another law of the Commonwealth, a State, a Territory or a foreign jurisdiction relating to standards for products that use energy, or affect the amount of energy used by another product; or

(iv) assisting in the development of standards for products that use energy, or affect the amount of energy used by another product, or standards for testing such products (whether or not those standards are to be requirements of a law of the Commonwealth, a State, a Territory or a foreign jurisdiction); or

(b) the disclosure is required or authorised by or under:

(i) a law of the Commonwealth (including this Act); or

(ii) a law, of a State or Territory, that is prescribed by the regulations for the purposes of this subparagraph; or

(c) the disclosure is expressly or impliedly authorised by the third person referred to in paragraph 169(1)(c); or

(d) at the time of the disclosure, the protected information is already publicly available; or

(e) both:

(i) the disclosure is, or is a kind of disclosure that is, certified in writing by the Minister to be in the public interest; and

(ii) the disclosure is made in accordance with any requirements specified in the regulations; or

(f) both:

(i) the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person; and

(ii) the disclosure is for the purposes of preventing or lessening that threat; or

(g) both:

(i) the information disclosed is a summary of, or statistics derived from, protected information; and

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(ii) the information is not likely to enable the identification of a person.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(2) An instrument made under subparagraph (1)(e)(i) certifying that a particular disclosure is in the public interest is not a legislative instrument.

(3) An instrument made under subparagraph (1)(e)(i) certifying that a kind of disclosure is in the public interest is a legislative instrument.

171 Disclosing commercially sensitive information to courts and tribunals etc.

(1) This section applies if:

(a) information or a document is disclosed to, or obtained by, a person (the ***public official***) in the course of the person performing a function or duty, or exercising a power, under or in relation to this Act; and

(b) there is a risk that disclosure of the information or document might substantially prejudice the commercial interests of a person other than the public official.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

Information not to be disclosed to court or tribunal

(2) The public official must not, except for the purposes of this Act, be required to disclose the information to, or produce the document in or to, a court, tribunal, authority or other person having power to require the production of documents or the answering of questions.

(3) For the purposes of subsection (2), the purposes of this Act include the purposes of another Act in relation to a requirement, power, function or duty provided for by or under this Act.

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Part 11—Miscellaneous

Division 1—Guide to this Part

172 Guide to this Part

This Part deals with a variety of miscellaneous matters.

These include the following:

(a) recovery of fees payable under this Act;

(b) compensation for the acquisition of property;

(c) the GEMS Regulator's annual report;

(d) regular independent reviews of the operation of this Act;

(e) the power to make regulations.

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Division 2—Miscellaneous

173 Recovery of fees

The following amounts may be recovered in a court of competent jurisdiction as debts due to the Commonwealth:

(a) an amount of a fee payable to the Commonwealth under this Act;

(b) an amount of a fee payable to the Commonwealth in connection with the performance of the GEMS Regulator's functions (see section 77).

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

174 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a relevant court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this Act:

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

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

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175 Annual report

(1) The GEMS Regulator must prepare and give to the Minister a report on the operation of this Act during each financial year.

(2) The GEMS Regulator must do so as soon as practicable after the end of each financial year.

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

176 Review of operation of this Act

(1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after:
  (a) the fifth anniversary of the commencement of this section; and
  (b) each tenth anniversary of the day referred to in paragraph (a).

(2) The review must be undertaken by persons who:
  (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
  (b) include one or more persons who are not APS employees.

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

(4) The Minister must cause a copy of the report of the review:
  (a) to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister; and
  (b) to be given to each participating jurisdiction.

177 Regulations

The Governor-General may make regulations prescribing matters:

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(a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

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

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

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

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

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

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

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

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

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

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

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

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

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

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

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

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

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Greenhouse and Energy Minimum Standards Act 2012	132, 2012	21 Sept 2012	s 3–16, 18–177: 1 Oct 2012 (s 2(1) items 2, 4) s 17: 1 Oct 2013 (s 2(1) item 3) Remainder: Royal Assent (s 2(1) item 1)	
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 319, 320): 12 Apr 2013 (s 2(1))	Sch 1 (item 320)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (items 95, 96) and Sch 8 (item 17): 24 June 2014 (s 2(1) item 9)	—
Regulatory Powers (Standardisation Reform) Act 2017	124, 2017	6 Nov 2017	Sch 7: 6 Nov 2018 (s 2(1) item 3)	Sch 7 (items 48–59)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 454, 455): 1 Sept 2021 (s 2(1) item 5)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 2	
s 3	am No 124, 2017
Division 4	
s 5	am No 13, 2013; No 31, 2014; No 124, 2017; No 13, 2021
s 6	rs No 124, 2017
Division 5	
s 7	am No 124, 2017
Part 2	
Division 2	
s 12	am No 31, 2014
Part 3	
Division 2	
s 16	am No 124, 2017
s 17	am No 124, 2017
Division 3	
s 18	am No 124, 2017
s 19	am No 124, 2017
Part 5	
Division 2	
s 40	am No 31, 2014
Division 7	
Subdivision A	
s 55	am No 124, 2017
Subdivision C	
s 59	am No 124, 2017
Subdivision E	
s 62	am No 124, 2017

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Endnote 4—Amendment history

Provision affected	How affected
Part 7	
Division 1	
s 81	am No 124, 2017
Division 2	
s 84	rep No 124, 2017
s 85	rep No 124, 2017
Division 3	
s 86	am No 124, 2017
Division 4	
Division 4	rs No 124, 2017
s 87	rs No 124, 2017
Division 5	
Division 5	rs No 124, 2017
s 88	rs No 124, 2017
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
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

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Endnote 4—Amendment history

Provision affected	How affected
s 106	rep No 124, 2017
s 107	rep No 124, 2017
s 108	rep No 124, 2017
s 109	rep No 124, 2017
s 110	rep No 124, 2017
s 111	rep No 124, 2017
s 112	rep No 124, 2017
Division 6	rep No 124, 2017
s 113	rep No 124, 2017
s 114	rep No 124, 2017
s 115	rep No 124, 2017
s 116	rep No 124, 2017
s 117	rep No 124, 2017
s 118	rep No 124, 2017
s 119	rep No 124, 2017
s 120	rep No 124, 2017
s 121	rep No 124, 2017
Division 8	
s 126	am No 124, 2017
Division 9	rep No 124, 2017
s 127	rep No 124, 2017
Part 8	
Division 1	
s 128	am No 124, 2017
Division 2	
Division 2	rs No 124, 2017
s 129	rs No 124, 2017
Division 3	
Division 3	rs No 124, 2017
s 130	rs No 124, 2017

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Provision affected	How affected
Division 4	
Division 4	rs No 124, 2017
s 131	rs No 124, 2017
Division 5	
Division 5	rs No 124, 2017
s 132	rs No 124, 2017
s 133	rep No 124, 2017
s 134	rep No 124, 2017
s 135	rep No 124, 2017
s 136	rep No 124, 2017
s 137	rep No 124, 2017
s 138	rep No 124, 2017
s 139	rep No 124, 2017
s 140	rep No 124, 2017
s 141	rep No 124, 2017
s 142	rep No 124, 2017
s 143	rep No 124, 2017
s 144	rep No 124, 2017
s 145	rep No 124, 2017
s 146	rep No 124, 2017
s 147	rep No 124, 2017
s 148	rep No 124, 2017
s 149	rep No 124, 2017
s 150	rep No 124, 2017
s 151	rep No 124, 2017
s 152	rep No 124, 2017
s 153	rep No 124, 2017
s 154	rep No 124, 2017
s 155	rep No 124, 2017
s 156	rep No 124, 2017
s 157	rep No 124, 2017

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Endnote 4—Amendment history

Provision affected	How affected
s 158	rep No 124, 2017
s 159	rep No 124, 2017
s 160	rep No 124, 2017
s 161	rep No 124, 2017
Division 6	
s 162	am No 124, 2017

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