



# **Regulatory Powers (Standard Provisions) Act 2014**

**No. 93, 2014**

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## About this compilation

### This compilation

This is a compilation of the *Regulatory Powers (Standard Provisions) Act 2014* that shows the text of the law as amended and in force on 20 March 2024 (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 Register ([www.legislation.gov.au](http://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 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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 in relation to monitoring, investigation and enforcement by regulatory agencies, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Regulatory Powers (Standard Provisions) Act 2014*.

### 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. Part 1 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 July 2014
2. Parts 2 to 7	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 October 2014 (F2014L01258)
3. Part 8	The day this Act receives the Royal Assent.	21 July 2014

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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.

### 3 Simplified outline

The following is a simplified outline of this Act:

This Act creates a framework for each of the following:

- (a) monitoring whether provisions of an Act or a legislative instrument have been, or are being, complied with;
- (b) monitoring whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct;
- (ba) monitoring other matters to which an Act or legislative instruments relates;
- (c) gathering material that relates to the contravention of an offence provision or a civil penalty provision;
- (d) the use of civil penalties to enforce provisions;
- (e) the use of infringement notices where there is a reasonable belief that a provision has been contravened;
- (f) the acceptance and enforcement of undertakings relating to compliance with provisions;
- (g) the use of injunctions to enforce provisions.

A provision of an Act or a legislative instrument is not subject to monitoring, investigation or enforcement under this Act by force of this Act. This Act must be triggered by another Act.

### 4 Dictionary

In this Act:

**authorised applicant:**

- (a) in Part 2 (monitoring)—has the meaning given by section 11; and
- (b) in Part 3 (investigation)—has the meaning given by section 41; and
- (c) in Part 4 (civil penalty provisions)—has the meaning given by section 80.

**authorised person:**

- (a) in Part 2 (monitoring)—has the meaning given by section 12; and
- (b) in Part 3 (investigation)—has the meaning given by section 42; and
- (c) in Part 6 (enforceable undertakings)—has the meaning given by section 112; and
- (d) in Part 7 (injunctions)—has the meaning given by section 119.

**civil penalty order** has the meaning given by subsection 82(4).

**civil penalty provision** has the meaning given by subsection 79(2).

**conduct** means:

- (a) an act; or
- (b) a failure to act.

**damage**, in relation to data, includes damage by erasure of data or addition of other data.

**enforceable:**

- (a) in Part 4 (civil penalty provisions)—has the meaning given by section 79; and
- (b) in Part 6 (enforceable undertakings)—has the meaning given by section 111; and
- (c) in Part 7 (injunctions)—has the meaning given by section 118.

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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.

**evidential material** has the meaning given by section 39.

**identity card**:

- (a) in Part 2 (monitoring)—has the meaning given by section 13; and
- (b) in Part 3 (investigation)—has the meaning given by section 43.

**infringement officer** has the meaning given by section 101.

**investigation powers** has the meaning given by sections 49, 50, 51 and 52.

**investigation warrant** means:

- (a) a warrant issued by an issuing officer under section 70; or
- (b) a warrant signed by an issuing officer under section 71.

**issuing officer**:

- (a) in Part 2 (monitoring)—has the meaning given by section 14; and
- (b) in Part 3 (investigation)—has the meaning given by section 44.

**judicial officer** means:

- (a) a magistrate; or
- (b) a Judge of a court of a State or Territory; or
- (c) a Judge of the Federal Circuit and Family Court of Australia (Division 2); or
- (d) a Judge of the Federal Court of Australia.

**monitoring powers** has the meaning given by sections 19, 20, 21 and 22.

**monitoring warrant** means a warrant issued under section 32.

***person assisting*** an authorised person:

- (a) in Part 2 (monitoring)—has the meaning given by section 23; and
- (b) in Part 3 (investigation)—has the meaning given by section 53.

***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).

***related***: a provision is ***related***:

- (a) in Part 2 (monitoring)—to another provision or information in the circumstances set out in section 10; and
- (b) in Part 3 (investigation)—to evidential material in the circumstances set out in section 40.

***relevant chief executive***:

- (a) in Part 2 (monitoring)—has the meaning given by section 15; and
- (b) in Part 3 (investigation)—has the meaning given by section 45; and
- (c) in Part 5 (infringement notices)—has the meaning given by section 102.

***relevant court***:

- (a) in Part 2 (monitoring)—has the meaning given by section 16; and
- (b) in Part 3 (investigation)—has the meaning given by section 46; and
- (c) in Part 4 (civil penalty provisions)—has the meaning given by section 81; and
- (d) in Part 6 (enforceable undertakings)—has the meaning given by section 113; and
- (e) in Part 7 (injunctions)—has the meaning given by section 120.

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**relevant data**, in Part 2 (monitoring), has the meaning given by subsection 20(3).

**subject to an infringement notice**, in relation to an offence provision or civil penalty provision, has the meaning given by section 100.

**subject to investigation**, in relation to an offence provision or a civil penalty provision, has the meaning given by section 38.

**subject to monitoring:**

- (a) in relation to a provision of an Act or a legislative instrument—has the meaning given by section 8; and
- (b) in relation to information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument—has the meaning given by section 9; and
- (c) in relation to a matter to which an Act or a legislative instrument relates—has the meaning given by section 9A.

## 5 Binding the Crown

This Act binds the Crown in each of its capacities.

## **Part 2—Monitoring**

### **Division 1—Outline and operation of this Part**

#### **6 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for:

- (a) monitoring whether provisions of an Act or a legislative instrument have been, or are being, complied with; and
- (b) monitoring whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct; and
- (c) monitoring other matters to which an Act or a legislative instrument relates.

For this Part to operate, a provision, information or a matter must be made subject to monitoring under this Part. This is to be done by another Act.

An authorised person may enter premises for the purpose of monitoring.

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

An authorised person who enters premises may exercise monitoring powers. The authorised person may be assisted by other persons if that assistance is necessary and reasonable and another Act empowers the authorised person to do so.

An occupier's consent to an authorised person entering premises for the purposes of monitoring must be voluntary. Authorised persons must abide by the terms of that consent.

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An authorised person who enters premises under a monitoring warrant must give details of the warrant to the occupier of the premises.

The occupier of the premises may observe the execution of a monitoring warrant and must provide reasonable facilities and assistance for the effective execution of the warrant.

#### 7 Purpose and operation of this Part

- (1) The principal purpose of this Part is to create a framework for monitoring:
  - (a) whether provisions of an Act or a legislative instrument have been, or are being, complied with; and
  - (b) whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct; and
  - (c) other matters to which an Act or a legislative instrument relates.
- (2) However, for this Part to operate, one or more of the following must apply:
  - (a) a provision of an Act or a legislative instrument must be made subject to monitoring under this Part;
  - (b) information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument must be made subject to monitoring under this Part;
  - (c) a matter to which an Act or a legislative instrument relates must be made subject to monitoring under this Part.

#### 8 Provisions *subject to monitoring*

A provision of an Act or a legislative instrument is ***subject to monitoring*** under this Part if an Act provides that the provision is subject to monitoring under this Part.



## 9 Information *subject to monitoring*

Information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is ***subject to monitoring*** under this Part if an Act provides that the information is subject to monitoring under this Part.

### 9A Matters *subject to monitoring*

A matter to which an Act or a legislative instrument relates is ***subject to monitoring*** under this Act if an Act provides that the matter is subject to monitoring.

## 10 *Related provisions*

- (1) A provision is ***related*** to a provision that is subject to monitoring under this Part (the ***monitored provision***) if an Act provides that the provision is related to the monitored provision.
- (2) A provision is ***related*** to information that is subject to monitoring under this Part if an Act provides that the provision is related to the information.
- (3) A provision is ***related*** to a matter that is subject to monitoring under this Part if an Act provides that the provision is related to the matter.

## 11 *Authorised applicant*

- (1) A person is an ***authorised applicant*** for the purposes of exercising powers under this Part to determine:
  - (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part;

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if an Act provides that the person is an authorised applicant in relation to that provision, information or matter for the purposes of this Part.

- (2) A person who is an **authorised applicant** for the purpose of exercising powers mentioned in subsection (1) is also an **authorised applicant** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised applicant in relation to a provision, information or a matter for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised applicant in relation to the provision, information or matter for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised applicant in relation to the provision, information or matter for the purposes of this Part.

**12 Authorised person**

- (1) A person is an **authorised person** for the purposes of exercising powers under this Part to determine:
    - (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
    - (b) whether information subject to monitoring under this Part is correct; or
    - (c) a matter subject to monitoring under this Part;if an Act provides that the person is an authorised person in relation to that provision, information or matter for the purposes of this Part.
  - (2) A person who is an **authorised person** for the purpose of exercising powers mentioned in subsection (1) is also an **authorised person** for the purposes of:
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- (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;
- that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised person in relation to a provision, information or a matter for the purposes of this Part by:
- (a) providing that a person of a specified class is an authorised person in relation to the provision, information or matter for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised person in relation to the provision, information or matter for the purposes of this Part.

### 13 Identity card

*Identity card*, in relation to a person who is an authorised person in relation to a provision, information or a matter for the purposes of this Part, means a card issued to the person under section 35 by the relevant chief executive in relation to that provision, information or matter.

### 14 Issuing officer

- (1) A judicial officer is an *issuing officer* for the purposes of exercising powers under this Part to determine:
- (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part;
- if an Act provides that the judicial officer is an issuing officer in relation to that provision, information or matter for the purposes of this Part.
- (2) A judicial officer who is an *issuing officer* for the purpose of exercising powers mentioned in subsection (1) is also an *issuing*

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**officer** for the purposes of exercising other powers under this Part that are incidental to the powers mentioned in subsection (1).

- (3) Without limiting subsection (1), an Act may provide that a judicial officer is an issuing officer in relation to a provision, information or a matter for the purposes of this Part by:
- (a) providing that a judicial officer of a specified class is an issuing officer in relation to the provision, information or matter for the purposes of this Part; or
  - (b) authorising another person to specify that a judicial officer, or a judicial officer of a specified class, is an issuing officer in relation to the provision, information or matter for the purposes of this Part.

### 15 *Relevant chief executive*

- (1) A person is the **relevant chief executive** for the purposes of exercising powers under this Part that relate to an authorised person in relation to a provision, information or a matter for the purposes of this Part, if an Act provides that the person is the relevant chief executive for the purposes of this Part in relation to the provision, information or matter.
- (2) A person who is the **relevant chief executive** for the purpose of exercising powers mentioned in subsection (1) is also the **relevant chief executive** for the purposes of:
- (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;
- that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is the relevant chief executive in relation to a provision, information or a matter for the purposes of this Part by:
- (a) providing that a person who holds a specified office is the relevant chief executive in relation to the provision, information or matter for those purposes; or
  - (b) authorising another person to specify that a person, or a person who holds a specified office, is the relevant chief

executive in relation to the provision, information or matter for those purposes.

## 16 Relevant court

A court is a *relevant court* in relation to a matter that arises because of:

- (a) the exercise of powers by a person under this Part to determine:
  - (i) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (ii) whether information subject to monitoring under this Part is correct; or
  - (iii) a matter subject to monitoring under this Part; or
- (b) the exercise of powers, or the performance of functions or duties, under this Part that are incidental to the powers mentioned in paragraph (a);

if an Act provides that the court is a relevant court in relation to that provision, information or matter for the purposes of this Part.

## 17 Privileges not abrogated

### *Self-incrimination*

- (1) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

### *Legal professional privilege*

- (2) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:

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- (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
- (b) the document would be privileged from being produced on the ground of legal professional privilege.

*Other legislation not affected*

- (3) The fact that this section is included in this Part does not imply that the privilege against self-incrimination or legal professional privilege is abrogated in any other Act.

## **Division 2—Powers of authorised persons**

### **Subdivision A—Monitoring powers**

#### **18 Entering premises by consent or under a warrant**

- (1) An authorised person may enter any premises and exercise the monitoring powers for one or more of the following purposes:
  - (a) determining whether a provision subject to monitoring under this Part has been, or is being, complied with;
  - (b) determining whether information subject to monitoring under this Part is correct;
  - (c) determining a matter subject to monitoring under this Part.

Note: The *monitoring powers* are set out in sections 19, 20, 21 and 22.

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

Note: If entry to the premises is with the occupier's consent, the authorised person must leave the premises if the consent ceases to have effect (see section 25).

#### **19 General monitoring powers**

The following are the *monitoring powers* that an authorised person may exercise in relation to premises under section 18:

- (a) the power to search the premises and any thing on the premises;
- (b) the power to examine or observe any activity conducted on the premises;
- (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
- (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;

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- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the authorised person requires for the purpose of exercising powers in relation to the premises;
- (h) the powers set out in subsections 20(1) and (4), 21(2) and 22(1).

**20 Operating electronic equipment**

- (1) The **monitoring powers** include the power to:
  - (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it.
- (2) The **monitoring powers** include the powers mentioned in subsection (4) if relevant data is found in the exercise of the power under subsection (1).
- (3) **Relevant data** means information relevant to determining:
  - (a) whether a provision that is subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part.
- (4) The powers are as follows:
  - (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power;
    - or



- (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;  
and remove the disk, tape or other storage device from the premises.
- (5) An authorised person may operate electronic equipment as mentioned in subsection (1) or (4) only if the authorised person believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 29.

## 21 Securing electronic equipment to obtain expert assistance

- (1) This section applies if an authorised person enters premises under a monitoring warrant.

### *Securing equipment*

- (2) The **monitoring powers** include the power to secure any electronic equipment that is on the premises if the authorised person suspects on reasonable grounds that:
  - (a) there is relevant data on the premises; and
  - (b) the relevant data may be accessible by operating the equipment; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) the relevant data may be destroyed, altered or otherwise interfered with, if the authorised person does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
  - (a) the authorised person's intention to secure the equipment; and

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- (b) the fact that the equipment may be secured for up to 24 hours.

### *Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
  - (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 29.

### *Extensions*

- (5) The authorised person may apply to an issuing officer for an extension of the 24-hour period if the authorised person believes on reasonable grounds that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The 24-hour period may be extended more than once.

Note: For the process by which an issuing officer may extend the period, see section 33.

## **22 Securing evidence of a contravention**

- (1) The ***monitoring powers*** include the power to secure a thing for a period not exceeding 24 hours if:
  - (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an authorised person believes on reasonable grounds that:
    - (i) a provision that is subject to monitoring under this Part, or a related provision, has been contravened with respect to the thing; or

- (ii) the thing affords evidence of the contravention of a provision that is subject to monitoring under this Part, or a related provision; or
  - (iii) the thing is intended to be used for the purpose of contravening a provision that is subject to monitoring under this Part, or a related provision; or
  - (iv) the thing affords evidence that information subject to monitoring under this Part, or information given in compliance or purported compliance with a related provision, is not correct; or
  - (v) the thing affords evidence in relation to a matter that is subject to monitoring under this Part, or in relation to compliance or purported compliance with a provision that is related to the matter; and
- (c) the authorised person believes on reasonable grounds that:
- (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
  - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.

The thing may be secured by locking it up, placing a guard or any other means.

*Extensions*

- (2) The authorised person may apply to an issuing officer for an extension of the 24-hour period if the authorised person believes on reasonable grounds that the thing needs to be secured for more than that period.
- (3) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (4) The 24-hour period may be extended more than once.

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Note: For the process by which an issuing officer may extend the period, see section 33.

### **23 Persons assisting authorised persons**

*Authorised persons may be assisted by other persons*

- (1) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under this Part, if:
- (a) that assistance is necessary and reasonable; and
  - (b) another Act empowers the authorised person to be assisted.

A person giving such assistance is a **person assisting** the authorised person.

*Powers, functions and duties of a person assisting*

- (2) A person assisting the authorised person:
- (a) may enter the premises; and
  - (b) may exercise powers under this Part for the purposes of assisting the authorised person to determine:
    - (i) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
    - (ii) whether information subject to monitoring under this Part is correct; or
    - (iii) a matter subject to monitoring under this Part; and
  - (c) may exercise powers and perform functions and duties under this Part that are incidental to the powers mentioned in paragraph (b); and
  - (d) must do so in accordance with a direction given to the person assisting by the authorised person.
- (3) A power exercised by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised person.

- (4) A function or duty performed by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised person.
- (5) If a direction is given under paragraph (2)(d) in writing, the direction is not a legislative instrument.

### **Subdivision B—Powers to ask questions and seek production of documents**

#### **24 Asking questions and seeking production of documents**

##### *Application*

- (1) This section applies if an authorised person enters premises for the purposes of determining:
  - (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part.

##### *Entry with consent*

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised person may ask the occupier to answer any questions, and produce any document, relating to:
  - (a) the operation of the provision; or
  - (b) the information; or
  - (c) the matter.

##### *Entry under a monitoring warrant*

- (3) If the entry is authorised by a monitoring warrant, the authorised person may require any person on the premises to answer any questions, and produce any document, relating to:
  - (a) the operation of the provision; or
  - (b) the information; or

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(c) the matter.

- (4) A person is not subject to a requirement under subsection (3) if:
- (a) the person does not possess the information or document required; and
  - (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

*Offence*

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

## **Division 3—Obligations and incidental powers of authorised persons**

### **25 Consent**

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 18(2)(a), an authorised person must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised person entered premises because of the consent of the occupier of the premises, the authorised person, and any person assisting the authorised person, must leave the premises if the consent ceases to have effect.
- (6) If:
  - (a) an authorised person enters premises because of the consent of the occupier of the premises; and
  - (b) the authorised person has not shown the occupier his or her identity card before entering the premises;the authorised person must do so on, or as soon as is reasonably practicable after, entering the premises.

### **26 Announcement before entry under warrant**

Before entering premises under a monitoring warrant, an authorised person must:

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

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- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
- (c) give any person at the premises an opportunity to allow entry to the premises.

**27 Authorised person to be in possession of warrant**

An authorised person executing a monitoring warrant must be in possession of the warrant or a copy of the warrant.

**28 Details of warrant etc. to be given to occupier**

- (1) An authorised person must comply with subsection (2) if:
  - (a) a monitoring warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The authorised person must, as soon as practicable:
  - (a) make a copy of the warrant available to the occupier or other person; and
  - (b) inform the occupier or other person in writing of the rights and responsibilities of the occupier or other person under Division 4.

**29 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:



- (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
  - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a relevant court for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

## Division 4—Occupier's rights and responsibilities

### 30 Right to observe execution of warrant

- (1) The occupier of premises to which a monitoring warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the monitoring warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### 31 Responsibility to provide facilities and assistance

- (1) The occupier of premises to which a monitoring warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an authorised person executing the warrant; and
  - (b) any person assisting the authorised person;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## **Division 5—Monitoring warrants**

### **32 Monitoring warrants**

#### *Application for warrant*

- (1) An authorised applicant may apply to an issuing officer for a warrant under this section in relation to premises.

#### *Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised persons should have access to the premises for the purposes of determining:
  - (a) whether a provision that is subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part.
- (3) However, the issuing officer must not issue the warrant unless the authorised applicant or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose for which the warrant is issued; and
  - (d) authorise one or more authorised persons (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and

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- (ii) to exercise the powers set out in this Part in relation to the premises; and
- (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 3 months after the issue of the warrant) on which the warrant ceases to be in force.

**Division 6—Extension of periods in which things secured****33 Extension of periods in which things secured***Application*

- (1) This section applies where an authorised person applies to an issuing officer under subsection 21(5) or 22(2) for an extension of the period during which a thing may be secured.

*Granting extension*

- (2) The issuing officer may, by order, grant an extension of the period if the issuing officer is satisfied, by information on oath or affirmation, that:
  - (a) where the thing is secured under section 21—it is necessary to secure the thing to ensure that relevant data is not destroyed, altered or otherwise interfered with; or
  - (b) where the thing is secured under section 22—it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained.
- (3) However, the issuing officer must not grant the extension unless the authorised person or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the extension is being sought.

*Content of order*

- (4) The order extending the period must:
  - (a) describe the thing to which the order relates; and
  - (b) state the period for which the extension is granted; and
  - (c) state that the order is made under this section; and
  - (d) state that the authorised person is authorised to secure the thing for that period.

## Division 7—Powers of issuing officers

### 34 Powers of issuing officers

*Powers conferred personally*

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

*Powers need not be accepted*

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

*Protection and immunity*

- (3) An issuing officer exercising a power conferred by this Part 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.

## **Division 8—Identity cards**

### **35 Identity cards**

- (1) The relevant chief executive must issue an identity card to an authorised person.

*Form of identity card*

- (2) The identity card must:
- (a) satisfy the requirements prescribed by the regulations; and
  - (b) contain a photograph that is no more than 5 years old of the authorised person.

*Offence*

- (3) A person commits an offence if:
- (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised person; and
  - (c) the person does not return the identity card to the relevant chief executive within 14 days after ceasing to be an authorised person.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

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

*Exception—card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

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

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*Authorised person must carry card*

- (6) An authorised person must carry his or her identity card at all times when exercising powers under this Part as an authorised person.



## **Part 3—Investigation**

### **Division 1—Outline and operation of this Part**

#### **36 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for gathering material that relates to the contravention of offence provisions and civil penalty provisions.

For this Part to operate, an offence provision or a civil penalty provision must be made subject to investigation under this Part. This is to be done by another Act.

An authorised person may enter premises if the authorised person suspects on reasonable grounds that there may be material on the premises related to the contravention of an offence provision or a civil penalty provision that is subject to investigation under this Part.

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

An authorised person who enters premises may exercise investigation powers. The authorised person may be assisted by other persons if that assistance is necessary and reasonable and another Act empowers the authorised person to do so.

An occupier's consent to an authorised person entering premises for the purposes of investigation must be voluntary. Authorised persons must abide by the terms of that consent.

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An authorised person who enters premises under an investigation warrant must give details of the warrant to the occupier of the premises.

The occupier of the premises may observe the execution of an investigation warrant and must provide reasonable facilities and assistance for the effective execution of the warrant.

**37 Purpose and operation of this Part**

- (1) The principal purpose of this Part is to create a framework for gathering material that relates to the contravention of offence provisions and civil penalty provisions.
- (2) However, for this Part to operate, an offence provision or a civil penalty provision must be made subject to investigation under this Part.

**38 Provisions *subject to investigation***

- (1) An offence provision of an Act or a legislative instrument is ***subject to investigation*** under this Part if an Act provides that the offence provision is subject to investigation under this Part.
- (2) A civil penalty provision under an Act or a legislative instrument is ***subject to investigation*** under this Part if an Act provides that the civil penalty provision is subject to investigation under this Part.

**39 *Evidential material***

***Evidential material*** means any of the following:

- (a) a thing with respect to which an offence provision or a civil penalty provision subject to investigation under this Part has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of such an offence provision or a civil penalty provision;

- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening such an offence provision or a civil penalty provision.

#### **40 Related provisions**

A provision is *related* to evidential material if an Act provides that the provision is related to the evidential material for the purposes of this Part.

#### **41 Authorised applicant**

- (1) A person is an *authorised applicant* for the purposes of exercising powers under this Part in relation to evidential material if an Act provides that the person is an authorised applicant in relation to the evidential material for the purposes of this Part.
- (2) A person who is an *authorised applicant* for the purpose of exercising powers mentioned in subsection (1) is also an *authorised applicant* for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised applicant in relation to evidential material for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised applicant in relation to the evidential material for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised applicant in relation to the evidential material for the purposes of this Part.

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**42 *Authorised person***

- (1) A person is an ***authorised person*** for the purposes of exercising powers under this Part in relation to evidential material if an Act provides that the person is an authorised person in relation to the evidential material for the purposes of this Part.
- (2) A person who is an ***authorised person*** for the purpose of exercising powers mentioned in subsection (1) is also an ***authorised person*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised person in relation to evidential material for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised person in relation to the evidential material for those purposes; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised person in relation to the evidential material for those purposes.

**43 *Identity card***

***Identity card***, in relation to a person who is an authorised person in relation to evidential material for the purposes of this Part, means a card issued to the person under section 76 by the relevant chief executive in relation to that evidential material.

**44 *Issuing officer***

- (1) A judicial officer is an ***issuing officer*** for the purposes of exercising powers under this Part in relation to evidential material, if an Act provides that the judicial officer is an issuing officer in relation to the evidential material for the purposes of this Part.

- (2) A judicial officer who is an **issuing officer** for the purpose of exercising powers mentioned in subsection (1) is also an **issuing officer** for the purposes of exercising other powers under this Part that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a judicial officer is an issuing officer in relation to evidential material for the purposes of this Part by:
  - (a) providing that a judicial officer of a specified class is an issuing officer in relation to the evidential material for the purposes of this Part; or
  - (b) authorising another person to specify that a judicial officer, or a judicial officer of a specified class, is an issuing officer in relation to the evidential material for the purposes of this Part.

#### **45 Relevant chief executive**

- (1) A person is the **relevant chief executive** for the purposes of exercising powers under this Part in relation to evidential material, if an Act provides that the person is the relevant chief executive in relation to the evidential material for the purposes of this Part.
- (2) A person who is the **relevant chief executive** for the purpose of exercising powers mentioned in subsection (1) is also the **relevant chief executive** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is the relevant chief executive in relation to evidential material for the purposes of this Part by:
  - (a) providing that a person who holds a specified office is the relevant chief executive in relation to the evidential material for those purposes; or
  - (b) authorising another person to specify that a person, or a person who holds a specified office, is the relevant chief

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executive in relation to the evidential material for those purposes.

**46 Relevant court**

A court is a *relevant court* in relation to a matter that arises because of:

- (a) the exercise of powers by a person under this Part in relation to evidential material; or
- (b) the exercise of powers, or the performance of functions or duties, under this Part that are incidental to the powers mentioned in paragraph (a);

if an Act provides that the court is a relevant court in relation to that evidential material for the purposes of this Part.

**47 Privileges not abrogated**

*Self-incrimination*

- (1) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

*Legal professional privilege*

- (2) Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
  - (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
  - (b) the document would be privileged from being produced on the ground of legal professional privilege.

*Other legislation not affected*

- (3) The fact that this section is included in this Part does not imply that the privilege against self-incrimination or legal professional privilege is abrogated in any other Act.

## Division 2—Powers of authorised persons

### Subdivision A—Investigation powers

#### 48 Entering premises by consent or under a warrant

- (1) If an authorised person suspects on reasonable grounds that there may be evidential material on any premises, the authorised person may:
  - (a) enter the premises; and
  - (b) exercise the investigation powers.

Note: The *investigation powers* are set out in sections 49, 50, 51 and 52.

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

Note: If entry to the premises is with the occupier's consent, the authorised person must leave the premises if the consent ceases to have effect (see section 55).

#### 49 General investigation powers

The following are the *investigation powers* that an authorised person may exercise in relation to premises under section 48:

- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the authorised person suspects on reasonable grounds may be on the premises;
- (b) if entry to the premises is under an investigation warrant:
  - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
  - (ii) the power to seize evidential material of that kind if the authorised person finds it on the premises;



- (c) the power to inspect, examine, take measurements of or conduct tests on evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to take onto the premises such equipment and materials as the authorised person requires for the purpose of exercising powers in relation to the premises;
- (f) the powers set out in subsections 50(1) and (2), subsection 51(2) and section 52.

## **50 Operating electronic equipment**

- (1) The *investigation powers* include the power to:
  - (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;if an authorised person suspects on reasonable grounds that the electronic equipment, disk, tape or other storage device is or contains evidential material.
- (2) The *investigation powers* include the following powers in relation to evidential material found in the exercise of the power under subsection (1):
  - (a) if entry to the premises is under an investigation warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or

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- (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;
- and remove the disk, tape or other storage device from the premises.
- (3) An authorised person may operate electronic equipment as mentioned in subsection (1) or (2) only if the authorised person believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 61.
- (4) An authorised person may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
  - (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

### 51 Securing electronic equipment to obtain expert assistance

- (1) This section applies if an authorised person enters premises under an investigation warrant to search for evidential material.

#### *Securing equipment*

- (2) The **investigation powers** include the power to secure any electronic equipment that is on the premises if the authorised person suspects on reasonable grounds that:
  - (a) there is evidential material of the kind specified in the warrant on the premises; and
  - (b) the evidential material may be accessible by operating the electronic equipment; and
  - (c) expert assistance is required to operate the equipment; and

- (d) the evidential material may be destroyed, altered or otherwise interfered with, if the authorised person does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
  - (a) the authorised person's intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
  - (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 61.

*Extensions*

- (5) The authorised person may apply to an issuing officer for an extension of the 24-hour period, if the authorised person believes on reasonable grounds that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the authorised person's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The 24-hour period may be extended more than once.

Note: For the process by which an issuing officer may extend the period, see section 74.

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### 52 Seizing evidence of related provisions

- (1) This section applies if an authorised person enters premises under an investigation warrant to search for evidential material.
- (2) The *investigation powers* include seizing a thing that is not evidential material of the kind specified in the warrant if:
  - (a) in the course of searching for the kind of evidential material specified in the warrant, the authorised person finds the thing; and
  - (b) the authorised person believes on reasonable grounds that:
    - (i) the thing is evidential material of another kind; or
    - (ii) a related provision has been contravened with respect to the thing; or
    - (iii) the thing is evidence of the contravention of a related provision; or
    - (iv) the thing is intended to be used for the purpose of contravening a related provision; and
  - (c) the authorised person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction.

### 53 Persons assisting authorised persons

*Authorised persons may be assisted by other persons*

- (1) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under this Part, if:
  - (a) that assistance is necessary and reasonable; and
  - (b) another Act empowers the authorised person to be assisted.

A person giving such assistance is a *person assisting* the authorised person.

*Powers, functions and duties of a person assisting*

- (2) A person assisting the authorised person:

- (a) may enter the premises; and
  - (b) may exercise powers under this Part in relation to evidential material; and
  - (c) may exercise powers and perform functions and duties under this Part that are incidental to the powers mentioned in paragraph (b); and
  - (d) must do so in accordance with a direction given to the person assisting by the authorised person.
- (3) A power exercised by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised person.
- (4) A function or duty performed by a person assisting the authorised person as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised person.
- (5) If a direction is given under paragraph (2)(d) in writing, the direction is not a legislative instrument.

### **Subdivision B—Powers to ask questions and seek production of documents**

#### **54 Asking questions and seeking production of documents**

##### *Application*

- (1) This section applies if an authorised person enters premises to search for evidential material.

##### *Entry with consent*

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the authorised person may ask the occupier to answer any questions, and produce any document, relating to evidential material.

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*Entry under an investigation warrant*

- (3) If the entry is authorised by an investigation warrant, the authorised person may require any person on the premises to answer any questions, and produce any document, relating to evidential material of the kind specified in the warrant.
- (4) A person is not subject to a requirement under subsection (3) if:
  - (a) the person does not possess the information or document required; and
  - (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

*Offence*

- (5) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

## **Division 3—Obligations and incidental powers of authorised persons**

### **55 Consent**

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 48(2)(a), an authorised person must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised person entered premises because of the consent of the occupier of the premises, the authorised person, and any person assisting the authorised person, must leave the premises if the consent ceases to have effect.
- (6) If:
  - (a) an authorised person enters premises because of the consent of the occupier of the premises; and
  - (b) the authorised person has not shown the occupier his or her identity card before entering the premises;the authorised person must do so on, or as soon as is reasonably practicable after, entering the premises.

### **56 Announcement before entry under warrant**

- (1) Before entering premises under an investigation warrant, an authorised person must:
  - (a) announce that he or she is authorised to enter the premises; and

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- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
  - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an authorised person is not required to comply with subsection (1) if the authorised person believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
  - (a) an authorised person does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the authorised person must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

**57 Authorised person to be in possession of warrant**

An authorised person executing an investigation warrant must be in possession of:

- (a) the warrant issued by the issuing officer under section 70, or a copy of the warrant as so issued; or
- (b) the form of warrant completed under subsection 71(6), or a copy of the form as so completed.

**58 Details of warrant etc. to be given to occupier**

- (1) An authorised person must comply with subsection (2) if:
  - (a) an investigation warrant is being executed in relation to premises; and



- (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The authorised person executing the warrant must, as soon as practicable:
  - (a) do one of the following:
    - (i) if the warrant was issued under section 70—make a copy of the warrant available to the occupier or other person (which need not include the signature of the issuing officer who issued it);
    - (ii) if the warrant was signed under section 71—make a copy of the form of warrant completed under subsection 71(6) available to the occupier or other person; and
  - (b) inform the occupier or other person in writing of the rights and responsibilities of the occupier or other person under Division 4.

## **59 Completing execution after temporary cessation**

- (1) This section applies if an authorised person, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The authorised person, and persons assisting, may complete the execution of the warrant if:
  - (a) the warrant is still in force; and
  - (b) the authorised person and persons assisting are absent from the premises:
    - (i) for not more than 1 hour; or
    - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by an issuing officer under subsection (5); or
    - (iii) for a longer period if the occupier of the premises consents in writing.

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*Application for extension in emergency situation*

- (3) An authorised person, or person assisting, may apply to an issuing officer for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
- (a) there is an emergency situation; and
  - (b) the authorised person or person assisting believes on reasonable grounds that the authorised person and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the authorised person or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

*Extension in emergency situation*

- (5) An issuing officer may extend the period during which the authorised person and persons assisting may be away from the premises if:
- (a) an application is made under subsection (3); and
  - (b) the issuing officer is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
  - (c) the extension would not result in the period ending after the warrant ceases to be in force.

**60 Completing execution of warrant stopped by court order**

An authorised person, and any persons assisting, may complete the execution of a warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

## **61 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a relevant court for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

## Division 4—Occupier's rights and responsibilities

### 62 Right to observe execution of warrant

- (1) The occupier of premises to which an investigation warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the investigation warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### 63 Responsibility to provide facilities and assistance

- (1) The occupier of premises to which an investigation warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an authorised person executing the warrant; and
  - (b) any person assisting the authorised person;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## **Division 5—General provisions relating to seizure**

### **64 Copies of seized things to be provided**

- (1) This section applies if:
  - (a) an investigation warrant is being executed in relation to premises; and
  - (b) an authorised person seizes one or more of the following from the premises under this Part:
    - (i) a document, film, computer file or other thing that can be readily copied;
    - (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is executed, may request the authorised person to give a copy of the thing or the information to the occupier or other person.
- (3) The authorised person must comply with the request as soon as practicable after the seizure.
- (4) However, the authorised person is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

### **65 Receipts for seized things**

- (1) The authorised person must provide a receipt for a thing that is seized under this Part.
- (2) One receipt may cover 2 or more things seized.

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**66 Return of seized things**

- (1) The relevant chief executive must take reasonable steps to return a thing seized under this Part when the earliest of the following happens:
- (a) the reason for the thing's seizure no longer exists;
  - (b) it is decided that the thing is not to be used in evidence;
  - (c) the period of 60 days after the thing's seizure ends.

Note: For exceptions to this rule, see subsections (2) and (3).

*Exceptions*

- (2) Subsection (1):
- (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing:
    - (i) is forfeited or forfeitable to the Commonwealth; or
    - (ii) is the subject of a dispute as to ownership.
- (3) The relevant chief executive is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and those proceedings (and any appeal from those proceedings) have not been completed; or
  - (b) the thing may continue to be retained because of an order under section 67; or
  - (c) the Commonwealth or the relevant chief executive 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 thing.

*Return of thing*

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

## **67 Issuing officer may permit a thing to be retained**

- (1) The relevant chief executive may apply to an issuing officer for an order permitting the retention of a thing seized under this Part for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
  - (a) 60 days after the seizure; or
  - (b) a period previously specified in an order of an issuing officer under this section.
- (2) Before making the application, the relevant chief executive must:
  - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the relevant chief executive believes to have such an interest of the proposed application.
- (3) Any person notified under paragraph (2)(b) is entitled to be heard in relation to the application.

### *Order to retain thing*

- (4) The issuing officer may order that the thing may continue to be retained for a period specified in the order if the issuing officer is satisfied that it is necessary for the thing to continue to be retained:
  - (a) for the purposes of an investigation as to whether an offence provision or a civil penalty provision that is subject to investigation under this Part has been contravened; or
  - (b) for the purposes of an investigation as to whether a related provision has been contravened; or
  - (c) to enable evidence of a contravention mentioned in paragraph (a) or (b) to be secured for the purposes of a prosecution or an action to obtain a civil penalty order.
- (5) The period specified must not exceed 3 years.

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**68 Disposal of things**

- (1) The relevant chief executive may dispose of a thing seized under this Part if:
  - (a) the relevant chief executive has taken reasonable steps to return the thing to a person; and
  - (b) either:
    - (i) the relevant chief executive has been unable to locate the person; or
    - (ii) the person has refused to take possession of the thing.
- (2) The relevant chief executive may dispose of the thing in such manner as the relevant chief executive thinks appropriate.

**69 Compensation for acquisition of property**

- (1) If the operation of section 68 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.
- (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 section:

*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.



## **Division 6—Investigation warrants**

### **70 Investigation warrants**

#### *Application for warrant*

- (1) An authorised applicant may apply to an issuing officer for a warrant under this section in relation to premises.

#### *Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the issuing officer must not issue the warrant unless the authorised applicant or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
  - (a) state the offence provision or offence provisions, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
  - (b) describe the premises to which the warrant relates; and
  - (c) state that the warrant is issued under this Division; and
  - (d) specify the kinds of evidential material to be searched for under the warrant; and
  - (e) state that evidential material of the kind specified may be seized under the warrant; and
  - (f) state that the person executing the warrant may seize any other thing found in the course of executing the warrant if the person believes on reasonable grounds that:

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- (i) the thing is evidential material of a kind not specified in the warrant; or
- (ii) a related provision has been contravened with respect to the thing; or
- (iii) the thing is evidence of the contravention of a related provision; or
- (iv) the thing is intended to be used for the purpose of contravening a related provision; and
- (g) name one or more authorised persons; and
- (h) authorise the authorised persons named in the warrant:
  - (i) to enter the premises; and
  - (ii) to exercise the powers set out in this Part in relation to the premises; and
- (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (j) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

**71 Investigation warrants by telephone, fax etc.**

*Application for warrant*

- (1) An authorised applicant may apply to an issuing officer by telephone, fax or other electronic means for a warrant under section 70 in relation to premises:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer:
  - (a) may require communication by voice to the extent that it is practicable in the circumstances; and
  - (b) may make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the authorised applicant must prepare an information of the kind mentioned in subsection 70(2)

in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the authorised applicant may apply for the warrant before the information is sworn or affirmed.

*Issuing officer may complete and sign warrant*

- (4) The issuing officer may complete and sign the same warrant that would have been issued under section 70 if, after considering the terms of the information and receiving such further information (if any) that the issuing officer requires, the issuing officer is satisfied that:
  - (a) the warrant should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (5) After completing and signing the warrant, the issuing officer must inform the authorised applicant, by telephone, fax or other electronic means, of:
  - (a) the terms of the warrant; and
  - (b) the day on which, and the time at which, the warrant was signed.

*Obligations on authorised applicant*

- (6) The authorised applicant must then do the following:
  - (a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
  - (b) state on the form the following:
    - (i) the name of the issuing officer;
    - (ii) the day on which, and the time at which, the warrant was signed;
  - (c) send the following to the issuing officer:
    - (i) the form of warrant completed by the authorised applicant;
    - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.

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- (7) The authorised applicant must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day on which the warrant ceases to be in force;
  - (b) the day on which the warrant is executed.

*Issuing officer to attach documents together*

- (8) The issuing officer must attach the documents provided under paragraph (6)(c) to the warrant signed by the issuing officer.

## **72 Authority of warrant**

- (1) A form of warrant duly completed under subsection 71(6) is authority for the same powers as are authorised by the warrant signed by the issuing officer under subsection 71(4).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 71 if:
- (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
  - (b) the warrant signed by the issuing officer authorising the exercise of the power is not produced in evidence.

## **73 Offence relating to warrants by telephone, fax etc.**

An authorised applicant must not:

- (a) state in a document that purports to be a form of warrant under section 71 the name of an issuing officer unless that issuing officer signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the authorised applicant's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the authorised applicant knows departs in a material

particular from the terms of a warrant signed by an issuing officer under that section; or

- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the authorised applicant knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or
- (e) give to an issuing officer a form of warrant under that section that is not the form of warrant that the authorised applicant purported to execute.

Penalty: Imprisonment for 2 years.

## Division 7—Extension of periods in which things secured

### 74 Extension of periods in which things secured

#### *Application*

- (1) This section applies where an authorised person applies to an issuing officer under subsection 51(5) for an extension of the period during which a thing may be secured.

#### *Granting extension*

- (2) The issuing officer may, by order, grant an extension of the period if the issuing officer is satisfied, by information on oath or affirmation, that it is necessary to secure the thing in order to prevent evidential material from being destroyed, altered or otherwise interfered with.
- (3) However, the issuing officer must not grant the extension unless the authorised person or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the extension is being sought.

#### *Content of order*

- (4) The order extending the period must:
  - (a) describe the thing to which the order relates; and
  - (b) state the period for which the extension is granted; and
  - (c) state that the order is made under this section; and
  - (d) state that the authorised person is authorised to secure the thing for that period.

## **Division 8—Powers of issuing officers**

### **75 Powers of issuing officers**

*Powers conferred personally*

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

*Powers need not be accepted*

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

*Protection and immunity*

- (3) An issuing officer exercising a power conferred by this Part 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.

## Division 9—Identity cards

### 76 Identity cards

- (1) The relevant chief executive must issue an identity card to an authorised person.

*Form of identity card*

- (2) The identity card must:
- (a) satisfy the requirements prescribed by the regulations; and
  - (b) contain a photograph that is no more than 5 years old of the authorised person.

*Offence*

- (3) A person commits an offence if:
- (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised person; and
  - (c) the person does not return the identity card to the relevant chief executive within 14 days after ceasing to be an authorised person.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

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

*Exception—card lost or destroyed*

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

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



*Authorised person must carry card*

- (6) An authorised person must carry his or her identity card at all times when exercising powers under this Part as an authorised person.

## **Part 4—Civil penalty provisions**

### **Division 1—Outline and operation of this Part**

#### **77 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for the use of civil penalties to enforce civil penalty provisions.

For this Part to operate for the purposes of that framework, a civil penalty provision must be made enforceable under this Part. This is done by another Act.

Civil penalty orders may be sought from a court in relation to contraventions of civil penalty provisions.

This Part also contains some rules of general application in relation to civil penalty provisions (such as the state of mind that must be proved and the defence of mistake of fact).

#### **78 Purposes and operation of this Part**

- (1) The principal purposes of this Part are to create a framework for the use of civil penalties to enforce civil penalty provisions.
- (2) However, for this Part to operate, a civil penalty provision must be made enforceable under this Part.

#### **79 Enforceable civil penalty provisions**

- (1) A provision is *enforceable* under this Part if:
  - (a) it is a civil penalty provision, as defined in subsection (2);
  - and

- (b) an Act provides that the civil penalty provision is enforceable under this Part.
- (2) A provision of an Act or a legislative instrument is a ***civil penalty provision*** if:
  - (a) either:
    - (i) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; or
    - (ii) another provision of an Act or a legislative instrument provides that the provision is a civil penalty provision, or that a person is liable to a civil penalty if the person contravenes the provision; and
  - (b) the provision is:
    - (i) a subsection, or a section that is not divided into subsections; or
    - (ii) a subregulation, or a regulation that is not divided into subregulations; or
    - (iii) a subclause (however described) of a Schedule to an Act or of a legislative instrument; or
    - (iv) a clause (however described) of a Schedule to an Act, or of a legislative instrument, that is not divided into subclauses.

## **80 *Authorised applicant***

- (1) A person is an ***authorised applicant*** for the purposes of exercising powers under this Part in relation to the contravention of a civil penalty provision if an Act provides that the person is an authorised applicant in relation to the civil penalty provision for the purposes of this Part.
- (2) A person who is an ***authorised applicant*** for the purpose of exercising powers mentioned in subsection (1) is also an ***authorised applicant*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).

**Part 4** Civil penalty provisions

**Division 1** Outline and operation of this Part

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- (3) Without limiting subsection (1), an Act may provide that a person is an authorised applicant in relation to a civil penalty provision for the purposes of this Part by:
- (a) providing that a person of a specified class is an authorised applicant in relation to the civil penalty provision for those purposes; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised applicant in relation to the civil penalty provision for those purposes.

**81 Relevant court**

A court is a *relevant court* for the purposes of exercising powers under this Part in relation to the contravention of a civil penalty provision, if an Act provides that the court is a relevant court in relation to the civil penalty provision for the purposes of this Part.

## **Division 2—Obtaining a civil penalty order**

### **82 Civil penalty orders**

#### *Application for order*

- (1) An authorised applicant may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The authorised applicant must make the application within 6 years of the alleged contravention.

#### *Court may order person to pay pecuniary penalty*

- (3) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

#### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and

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- (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

**83 Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

**84 Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

**85 Multiple contraventions**

- (1) A relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 93.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**86 Proceedings may be heard together**

A relevant court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**87 Civil evidence and procedure rules for civil penalty orders**

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

## Division 3—Civil proceedings and criminal proceedings

### 88 Civil proceedings after criminal proceedings

A relevant court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### 89 Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

### 90 Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.



**91 Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the information or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## Division 4—Miscellaneous

### 92 Ancillary contravention of civil penalty provisions

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

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 94 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

### 93 Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
  - (a) within a particular period; or
  - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:

- (a) within a particular period; or
  - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

#### **94 State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 92(1) (which is about ancillary contravention of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 95 (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

#### **95 Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and

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- (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

**96 Exceptions etc. to civil penalty provisions—burden of proof**

If, in proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

**97 Civil penalty provisions contravened by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

## **Part 5—Infringement notices**

### **Division 1—Outline and operation of this Part**

#### **98 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.

For this Part to operate, a provision must be made subject to an infringement notice under this Part. This is to be done by another Act.

A person can be given an infringement notice in relation to a contravention of a provision that is subject to an infringement notice under this Part. The provision may be a strict liability offence provision or a civil penalty provision, or both.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision subject to an infringement notice under this Part. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

#### **99 Purpose and operation of this Part**

- (1) The principal purpose of this Part is to create a framework for the use of infringement notices where an infringement officer reasonably believes that a provision has been contravened.

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- (2) However, for this Part to operate, a provision of an Act or a legislative instrument must be made subject to an infringement notice under this Part.

**100 Provisions subject to infringement notices**

- (1) A provision of an Act or a legislative instrument, contravention of which constitutes an offence of strict liability, is **subject to an infringement notice** under this Part if an Act provides that the provision is subject to an infringement notice under this Part.
- (2) A civil penalty provision of an Act or a legislative instrument is **subject to an infringement notice** under this Part if an Act provides that the provision is subject to an infringement notice under this Part.

**101 Infringement officer**

- (1) A person is an **infringement officer** for the purposes of exercising powers under this Part in relation to a contravention of a provision if an Act provides that the person is an infringement officer in relation to that provision for the purposes of this Part.
- (2) A person who is an **infringement officer** for the purpose of exercising powers mentioned in subsection (1) is also an **infringement officer** for the purposes of:
- (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;
- that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an infringement officer in relation to a provision for the purposes of this Part by:
- (a) providing that a person of a specified class is an infringement officer in relation to the provision for the purposes of this Part; or

- (b) authorising another person to specify that a person, or a person of a specified class, is an infringement officer in relation to the provision for the purposes of this Part.

### **102 *Relevant chief executive***

- (1) A person is the ***relevant chief executive*** for the purposes of exercising powers under this Part in relation to a contravention of a provision if an Act provides that the person is the relevant chief executive in relation to that provision for the purposes of this Part.
- (2) A person who is the ***relevant chief executive*** for the purpose of exercising powers mentioned in subsection (1) is also the ***relevant chief executive*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is the relevant chief executive in relation to a provision for the purposes of this Part by:
  - (a) providing that a person who holds a specified office is the relevant chief executive in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person who holds a specified office, is the relevant chief executive in relation to the provision for the purposes of this Part.

## Division 2—Infringement notices

### 103 When an infringement notice may be given

- (1) If an infringement officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, the infringement officer may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  - (b) the person fails or refuses to do that thing within that period or before that time; and
  - (c) the failure or refusal occurs on more than 1 day; and
  - (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.  
For continuing contraventions of civil penalty provisions, see section 93 of this Act.

- (5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence provision, the infringement notice must relate to the alleged contravention of the offence provision.

### 104 Matters to be included in an infringement notice

- (1) An infringement notice must:
  - (a) be identified by a unique number; and



- (b) state the day on which it is given; and
- (c) state the name of the person to whom the notice is given; and
- (d) state the name and contact details of the person who gave the notice, and that the person is an infringement officer for the purposes of issuing the infringement notice; and
- (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
  - (i) the provision that was allegedly contravened; and
  - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
  - (iii) the time (if known) and day of, and the place of, each alleged contravention; and
- (f) state the amount that is payable under the notice; and
- (g) give an explanation of how payment of the amount is to be made; and
- (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):
  - (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
  - (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or
  - (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and
- (i) state that payment of the amount is not an admission of guilt or liability; and
- (j) state that the person may apply to the relevant chief executive to have the period in which to pay the amount extended; and

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- (k) state that the person may choose not to pay the amount and, if the person does so:
  - (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
  - (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
  - (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
- (l) set out how the notice can be withdrawn; and
- (m) state that if the notice is withdrawn:
  - (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
  - (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
  - (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and
- (n) state that the person may make written representations to the relevant chief executive seeking the withdrawal of the notice.

- (2) If the notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
  - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.
- (3) If the notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
- (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each alleged contravention; and
  - (b) either:
    - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
    - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.
- Note: Under section 103, a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.
- (4) Subsections (2) and (3) do not apply if another Act expressly provides otherwise.

### **105 Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the relevant chief executive for an extension of the period referred to in paragraph 104(1)(h).
- (2) If the application is made before the end of that period, the relevant chief executive may, in writing, extend that period. The relevant chief executive may do so before or after the end of that period.

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- (3) If the relevant chief executive extends that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 104(1)(h) is taken to be a reference to that period so extended.
- (4) If the relevant chief executive does not extend that period, a reference in this Part, or in a notice or other instrument under this Part, to the period referred to in paragraph 104(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 104(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the relevant chief executive's decision not to extend.
- (5) The relevant chief executive may extend the period more than once under subsection (2).

### **106 Withdrawal of an infringement notice**

#### *Representations seeking withdrawal of notice*

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

#### *Withdrawal of notice*

- (2) The relevant chief executive may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the relevant chief executive:
  - (a) must take into account any written representations seeking the withdrawal that were given by the person to the relevant chief executive; and
  - (b) may take into account the following:

- (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to an infringement notice under this Part that is included in the same Act or legislative instrument as the provision in relation to which the infringement notice is given;
- (ii) the circumstances of the alleged contravention;
- (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision subject to an infringement notice under this Part if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
- (iv) any other matter the relevant chief executive considers relevant.

*Notice of withdrawal*

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  - (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and
  - (e) that:
    - (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    - (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
    - (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty

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order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

- (5) If:
- (a) the relevant chief executive withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice; the Commonwealth must refund to the person an amount equal to the amount paid.

**107 Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 104(1)(h):
- (a) any liability of the person for the alleged contravention is discharged; and
  - (b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; and
  - (c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; and
  - (d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and
  - (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  - (f) if the alleged contravention is of an offence provision—the person is not regarded as having been convicted of the offence.

(2) Subsection (1) does not apply if the notice has been withdrawn.

### **108 Effect of this Part**

This Part does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
- (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or
  - (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

## **Part 6—Enforceable undertakings**

### **Division 1—Outline and operation of this Part**

#### **109 Simplified outline**

The following is a simplified outline of this Part:

This Part creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

For this Part to operate, a provision must be made enforceable under this Part. This is to be done by another Act.

An authorised person may accept an undertaking relating to compliance with a provision that is enforceable under this Part.

The undertaking may be enforced in a relevant court.

The orders that may be made by a relevant court include an order directing compliance, an order requiring any financial benefit from the failure to comply to be surrendered and an order for damages.

#### **110 Purpose and operation of this Part**

- (1) The principal purpose of this Part is to create a framework for the acceptance and enforcement of undertakings relating to compliance with provisions.
- (2) However, for this Part to operate, a provision of an Act or a legislative instrument must be made enforceable under this Part.



### **111 Enforceable provisions**

A provision of an Act or a legislative instrument is **enforceable** under this Part if an Act provides that the provision is enforceable under this Part.

### **112 Authorised person**

- (1) A person is an **authorised person** for the purposes of exercising powers under this Part in relation to a provision if an Act provides that the person is an authorised person in relation to that provision for the purposes of this Part.
- (2) A person who is an **authorised person** for the purpose of exercising powers mentioned in subsection (1) is also an **authorised person** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised person in relation to a provision for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised person in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised person in relation to the provision for the purposes of this Part.

### **113 Relevant court**

A court is a **relevant court** for the purposes of exercising powers under this Part in relation to an undertaking given in relation to a provision enforceable under this Part, if an Act provides that the court is a relevant court in relation to that provision for the purposes of this Part.

## **Division 2—Accepting and enforcing undertakings**

### **114 Acceptance of undertakings**

- (1) An authorised person may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with a provision enforceable under this Part, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with a provision enforceable under this Part, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a provision enforceable under this Part, or is unlikely to contravene such a provision, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of an authorised person.
- (4) The consent of an authorised person is not a legislative instrument.
- (5) An authorised person may, by written notice given to the person, cancel the undertaking.

### **115 Enforcement of undertakings**

- (1) An authorised person may apply to a relevant court for an order under subsection (2) if:
  - (a) a person has given an undertaking under section 114; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the authorised person considers that the person has breached the undertaking.

- (2) If the relevant court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

## Part 7—Injunctions

### Division 1—Outline and operation of this Part

#### 116 Simplified outline

The following is a simplified outline of this Part:

This Part creates a framework for using injunctions to enforce provisions.

For this Part to operate, a provision must be made enforceable under this Part. This is to be done by another Act.

Injunctions may be used to restrain a person from contravening a provision enforceable under this Part, or to compel compliance with such a provision.

An interim injunction is available.

#### 117 Purpose and operation of this Part

- (1) The principal purpose of this Part is to create a framework for the use of injunctions in the enforcement of provisions.
- (2) However, for this Part to operate, a provision of an Act or a legislative instrument must be made enforceable under this Part.

#### 118 *Enforceable provisions*

A provision of an Act or a legislative instrument is ***enforceable*** under this Part if an Act provides that the provision is enforceable under this Part.

### **119 *Authorised person***

- (1) A person is an ***authorised person*** for the purposes of applying under this Part for an injunction in relation to a provision enforceable under this Part, if an Act provides that the person is an authorised person in relation to that provision for the purposes of this Part.
- (2) A person who is an ***authorised person*** for the purpose of exercising powers mentioned in subsection (1) is also an ***authorised person*** for the purposes of:
  - (a) exercising other powers under this Part; or
  - (b) performing functions or duties under this Part;that are incidental to the powers mentioned in subsection (1).
- (3) Without limiting subsection (1), an Act may provide that a person is an authorised person in relation to a provision for the purposes of this Part by:
  - (a) providing that a person of a specified class is an authorised person in relation to the provision for the purposes of this Part; or
  - (b) authorising another person to specify that a person, or a person of a specified class, is an authorised person in relation to the provision for the purposes of this Part.

### **120 *Relevant court***

A court is a ***relevant court*** for the purposes of exercising powers under this Part in relation to the contravention of a provision enforceable under this Part, if an Act provides that the court is a relevant court in relation to that provision for the purposes of this Part.

## Division 2—Injunctions

### 121 Grant of injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of a provision enforceable under this Part, a relevant court may, on application by an authorised person, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do a thing.

#### *Performance injunctions*

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
  - (b) the refusal or failure was, is or would be a contravention of a provision enforceable under this Part;
- the court may, on application by an authorised person, grant an injunction requiring the person to do that thing.

### 122 Interim injunctions

#### *Grant of interim injunctions*

- (1) Before deciding an application for an injunction under section 121, a relevant court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do a thing.

*No undertakings as to damages*

- (2) The court must not require an applicant for an injunction under section 121 to give an undertaking as to damages as a condition of granting an interim injunction.

**123 Discharging or varying injunctions**

A relevant court may discharge or vary an injunction granted by that court under this Part.

**124 Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of a relevant court under this Part to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of a relevant court under this Part to grant an injunction requiring a person to do a thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not the person has previously refused or failed to do that thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that thing.

**125 Other powers of a relevant court unaffected**

The powers conferred on a relevant court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.



## **Part 8—General provisions**

### **126 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

Endnote 1—About the endnotes

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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 how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

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

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Regulatory Powers (Standard Provisions) Act 2014	93, 2014	21 July 2014	s 6–125: 1 Oct 2014 (s 2(1) item 2) Remainder: 21 July 2014 (s 2(1) items 1, 3)	
Regulatory Powers (Standardisation Reform) Act 2017	124, 2017	6 Nov 2017	Sch 1: 7 Nov 2017 (s 2(1) item 2)	Sch 1 (items 9–12)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 715): 1 Sept 2021 (s 2(1) item 5)	—
Regulatory Powers (Standardisation Reform) Act 2021	32, 2021	26 Mar 2021	Sch 1: 27 Mar 2021 (s 2(1) item 2)	—
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023	74, 2023	20 Sept 2023	Sch 1 (items 119–121): 20 Mar 2024 (s 2(1) item 2)	Sch 1 (item 121)

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s 3.....	am No 32, 2021
s 4.....	am No 13, 2021; No 32, 2021
<b>Part 2</b>	
<b>Division 1</b>	
s 6.....	am No 32, 2021
s 7.....	rs No 32, 2021
s 9A.....	ad No 32, 2021
s 10.....	am No 32, 2021
s 11.....	am No 32, 2021
s 12.....	am No 32, 2021
s 13.....	rs No 32, 2021
s 14.....	am No 32, 2021
s 15.....	am No 32, 2021
s 16.....	rs No 32, 2021
<b>Division 2</b>	
<b>Subdivision A</b>	
s 18.....	am No 32, 2021
s 20.....	am No 32, 2021
s 22.....	am No 124, 2017; No 32, 2021
s 23.....	am No 32, 2021
<b>Subdivision B</b>	
s 24.....	am No 32, 2021
<b>Division 5</b>	
s 32.....	am No 32, 2021
<b>Division 8</b>	
s 35.....	am No 124, 2017; No 74, 2023

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Part 3</b>	
<b>Division 1</b>	
s 38.....	am No 32, 2021
s 41.....	am No 32, 2021
<b>Division 9</b>	
s 76.....	am No 124, 2017; No 74, 2023
<b>Part 4</b>	
<b>Division 2</b>	
s 82.....	am No 124, 2017
<b>Part 5</b>	
<b>Division 1</b>	
s 98.....	am No 32, 2021
s 100.....	rs No 32, 2021
<b>Division 2</b>	
s 103.....	am No 32, 2021
s 104.....	am No 124, 2017; No 32, 2021
s 106.....	am No 32, 2021
s 107.....	am No 32, 2021