Recycling and Waste Reduction Act 2020

No. 119, 2020

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *Recycling and Waste Reduction Act 2020* that shows the text of the law as amended and in force on 1 September 2021 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to reduce the environmental and other impacts of products and waste material, and for related purposes

Chapter 1—Introduction

Part 1—Preliminary provisions

1 Short title

This Act is the *Recycling and Waste Reduction Act 2020*.

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
Provisions	**Commencement**	**Date/Details**
1. The whole of this Act	The day after this Act receives the Royal Assent.	16 December 2020

Note: This table relates only to the provisions of this Act as originally enacted.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

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

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Section 3

3 Objects of this Act

(1) The objects of this Act are as follows:

(a) to reduce the impact on human and environmental health of products, waste from products and waste material, including by reducing the amount of greenhouse gases emitted, energy and resources used and water consumed in connection with products, waste from products and waste material;

(b) to realise the community and economic benefits of taking responsibility for products, waste from products and waste material;

(c) to develop a circular economy that maximises the continued use of products and waste material over their life cycle and accounts for their environmental impacts;

(d) to contribute to Australia meeting its international obligations concerning the impact referred to in paragraph (a).

(2) These objects are to be achieved by:

(a) regulating the export of waste material to promote its management in an environmentally sound way; and

(b) encouraging and regulating the reuse, remanufacture, recycling and recovery of products, waste from products and waste material in an environmentally sound way; and

(c) encouraging and regulating manufacturers, importers, distributors, designers and other persons to take responsibility for products, including by taking action that relates to:

(i) reducing or avoiding generating waste through improvements in product design; and

(ii) improving the durability, reparability and reusability of products; and

(iii) managing products throughout their life cycle.

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4 Minister to have regard to certain matters in exercising powers and functions

In performing functions and exercising powers under this Act, the Minister must take a precautionary approach in relation to protecting human and environmental health.

5 Simplified outline of this Act

This Act creates a framework for reducing the impact on human and environmental health of waste material.

Waste material includes any thing that is discarded, rejected or left over from an industrial, commercial, domestic or other activity, and any thing that is surplus to or a by-product of those activities.

The Minister may, in rules made under this Act, prescribe kinds of waste material. If the Minister does so, the waste material is called regulated waste material and its export may be prohibited by the rules unless certain conditions prescribed by the rules (called prescribed export conditions) are complied with.

Conditions may include a requirement to hold an export licence to export the regulated waste material and to provide the Minister with an export declaration before the regulated waste material is exported.

The Minister may, on application, grant an exemption to people who wish to export regulated waste material from complying with certain requirements imposed by this Act. An exemption remains in force for up to 12 months, and may be granted subject to conditions. An exemption can be revoked.

This Act also creates a framework for reducing the impact on human and environmental health of products and waste from products.

A product can include any thing that is manufactured.

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Section 5

This Act provides for 3 regimes relating to product stewardship, each of which is designed to encourage or require manufacturers, importers, distributors and other persons to take responsibility for products including, for example, through improved product design.

The first regime, called voluntary product stewardship, involves accrediting voluntary arrangements designed to further the objects of this Act in relation to products, and authorising the use of product stewardship logos in accordance with such arrangements.

The second regime, called co-regulatory product stewardship, involves requiring some manufacturers, importers, distributors and users of products (called liable parties), who have been specified in the rules, to be members of co-regulatory arrangements approved by the Minister. These arrangements must have outcomes, specified in the rules, that are designed to further the objects of this Act.

The third regime, called mandatory product stewardship, enables rules to be made that require specified persons to take, or not to take, specified action in relation to products.

Authorised officers have powers to ensure people are complying with this Act, to investigate non-compliance and to enforce this Act. Enforcement mechanisms include infringement notices, enforceable undertakings and injunctions.

Auditors can conduct audits in relation to export operations, product stewardship arrangements and the performance of functions and the exercise of powers under this Act.

The rules may require persons who have obligations under this Act to make and retain specified kinds of records.

The Minister has various powers to gather information relating to regulated waste material, product stewardship, the objects of this Act and other matters. The use and disclosure of certain kinds of information is regulated.

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Certain decisions under this Act may be reviewed by the Minister and by the Administrative Appeals Tribunal.

Fees may be charged relating to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

The rules may also make provision in relation to the payment of waste material export charge (which is a tax imposed under related legislation).

6 Act binds the Crown

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

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

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

7 Extension to external Territories

This Act extends to every external Territory.

8 Extraterritorial application

This Act extends to acts, omissions, matters and things outside Australia.

9 Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

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Part 2—Interpretation

10 The Dictionary

In this Act:

accredited voluntary arrangement: see subsection 70(1).

accrediting authority: see paragraph 70(3)(c).

administrator:
(a) of a voluntary arrangement: see paragraph 71(c); and
(b) of a co-regulatory arrangement: see paragraph 85(3)(e).

affected: for when a person is ***affected*** by a reviewable decision, see section 151.

approved auditor means a person approved under subsection 116(1) to conduct audits.

approved co-regulatory arrangement: see section 78.

artistic work has the same meaning as in the *Copyright Act 1968*.

associate: see section 11.

auditor means:
(a) an approved auditor; or
(b) a Commonwealth authorised officer; or
(c) a State or Territory authorised officer.

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

Australian law means a law of the Commonwealth, or of a State or Territory.

authorised government enforcement officer means a Commonwealth authorised officer, or a State or Territory

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authorised officer, who satisfies the requirements determined under section 129.

authorised officer means a person who is authorised under section 125 to be an authorised officer for the purposes of this Act.

child has a meaning affected by subsection 11(2).

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

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

Commonwealth authorised officer means an authorised officer who is an officer or employee of the Commonwealth, or an authority of the Commonwealth.

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

constitutional trade or commerce means trade or commerce:

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

conveyance means:

(a) an aircraft; or
(b) a vessel.

de facto partner of a person has the meaning given by the *Acts Interpretation Act 1901*.

distribute includes sell and supply, whether for consideration or not.

engage in conduct means:

(a) do an act; or
(b) omit to perform an act.

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entered for export: see section 12.

expiry date, for an export licence: see subsection 37(4).

export means export from Australia.

export business means a business that carries out export operations in relation to a kind of waste material.

export declaration means a written declaration of an intention to export regulated waste material that complies with section 19.

export licence means an export licence granted under Part 4 of Chapter 2.

export operations: see section 13.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

improvement notice means a notice given under section 88.

intellectual property rights: see section 74.

liable party in relation to a product: see section 77.

life cycle of a product includes:

(a) the time when the product begins to be manufactured; and
(b) the time when the product is waste.

Minister's priority list: see section 67.

parent has a meaning affected by subsection 11(4).

prescribed export conditions means conditions prescribed by rules made for the purposes of section 18.

prescribed law means:

(a) a law (other than this Act) that is administered by the Minister; or
(b) an Australian law that is prescribed by the rules.

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product means a thing (including a substance or mixture of substances) that is:

(a) manufactured; or

(b) prescribed by the rules;

and includes a class of such things.

product return payment: see subsection 92(8).

product stewardship criteria: see section 14.

product stewardship logo: see section 73.

prospective liable party: see subsection 89(1).

protected information: see subsection 148(3).

recover includes recover resources, material or energy from products, waste from products or waste material.

regulated waste material: see section 17.

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

related body corporate has same meaning as in the *Corporations Act 2001*.

relevant Commonwealth liability means:

(a) any of the following that are due and payable:

(i) a fee payable under this Act;

(ii) a charge imposed by the *Recycling and Waste Reduction Charges (Customs) Act 2020*;

(iii) a charge imposed by the *Recycling and Waste Reduction Charges (Excise) Act 2020*;

(iv) a charge imposed by the *Recycling and Waste Reduction Charges (General) Act 2020*; or

(b) penalties for late payment of a fee or charge described in subparagraphs (a)(i) to (iv); or

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(c) a pecuniary penalty, or other liability for an amount, imposed by or under a prescribed law.

Note: A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a provision of this Act in certain circumstances (see section 181).

relevant court means:

(a) the Federal Court of Australia; or

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

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

relevant person, for an audit under Division 4 of Part 2 of Chapter 4, has the meaning given by section 114.

reviewable decision: see section 151.

rules means the rules made under section 188.

scheme: see subsection 89(6).

Secretary means the Secretary of the Department.

State or Territory authorised officer means an authorised officer who is an officer or employee:

(a) of a State or Territory; or

(b) of an authority of a State or Territory.

stepchild has a meaning affected by subsection 11(3).

third party authorised officer means a person who is authorised under subsection 125(5) to be a third party authorised officer.

this Act includes:

(a) the rules; and

(b) the Regulatory Powers Act as it applies in relation to this Act.

trade mark has the same meaning as in the *Trade Marks Act 1995*.

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waste, in relation to a product, means waste associated with the product over the life cycle of the product.

waste material: see section 15.

waste material export charge means a charge imposed under:

(a) section 7 of the *Recycling and Waste Reduction Charges (Customs) Act 2020*; or

(b) section 7 of the *Recycling and Waste Reduction Charges (Excise) Act 2020*; or

(c) section 7 of the *Recycling and Waste Reduction Charges (General) Act 2020*.

11 Definition of *associate*

(1) ***Associate*** of a person (the ***first person***) includes each of the following:

(a) a spouse, de facto partner, child (who is at least 18 years old) or parent of the first person;

(b) a person not mentioned in paragraph (a) who is or was:

(i) directly or indirectly concerned in; or

(ii) in a position to control or influence the conduct of;

a business or undertaking of:

(iii) the first person; or

(iv) a corporation of which the first person is an officer or employee, or in which the first person holds shares;

(c) a corporation of which the first person, or any of the other persons mentioned in paragraph (a) or (b), is an officer or employee;

(d) if the first person is a body corporate—another body corporate that is a related body corporate of the first person.

(2) Without limiting who is a child of another person for the purposes of this Act, a person is the ***child*** of another person if the person is:

(a) a stepchild or adopted child of the other person; or

(b) a child of the other person within the meaning of the *Family Law Act 1975*.

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(3) Without limiting who is a stepchild of another person for the purposes of this Act, a child of a de facto partner of the other person is the ***stepchild*** of the other person if the child would be the other person's stepchild except that the other person is not legally married to the partner.

(4) Without limiting who is a parent of another person for the purposes of this Act, a person is the ***parent*** of another person if the other person is a child of the person because of the definition of ***child*** in subsection (2).

12 Definition of *entered for export*

Waste material is ***entered for export*** if, in the course of export operations, the waste material is presented to, or information or a document about the waste material is given to:

(a) the Minister; or

(b) an authorised officer; or

(c) another person who is authorised to exercise powers or perform functions under this Act in relation to the waste material;

for the purpose of the Minister, authorised officer or other person exercising powers or performing functions under this Act in relation to the waste material.

13 Definition of *export operations*

Export operations means:

(a) operations to export waste material; or

(b) operations to produce, or prepare, waste material for export; or

(c) operations (other than operations referred to in paragraph (a) or (b)) in relation to waste material for export before it is exported.

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14 When the *product stewardship criteria* are satisfied

The ***product stewardship criteria*** are satisfied in relation to a product if:

(a) the product is sold in more than one State or Territory; and

(b) at least one of the following applies in relation to the product:

(i) the product contains hazardous substances;

(ii) there is the potential to significantly increase the conservation of materials used in the product, or the recovery of resources (including materials and energy) from waste from the product;

(iii) there is the potential to significantly reduce the impact that the product has on the environment, or that substances in the product have on the environment, or on the health or safety of humans.

Note: Whether the product stewardship criteria are satisfied in relation to a product is relevant for determining whether:

(a) to accredit a voluntary arrangement in relation to that product (see subsection 70(4)); or

(b) rules can be made under this Act in relation to the product (see sections 77 (co-regulatory product stewardship—liable parties for products) and 93 (mandatory product stewardship criteria)).

15 Definition of *waste material*

(1) ***Waste material*** means any thing (including a substance or mixture of substances) that is:

(a) discarded, rejected or left over from an industrial, commercial, domestic or other activity; or

(b) surplus to or a by-product of an industrial, commercial, domestic or other activity; or

(c) prescribed by the rules.

(2) ***Waste material*** can be a gas, liquid, solid or energy, or a combination of any of them.

(3) A thing can be ***waste material*** whether or not:

(a) it is of value; or

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(b) it is or may be processed, recycled, re-used or recovered.

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Chapter 2—Regulating the export of waste material

Part 1—Introduction

16 Simplified outline of this Chapter

The rules may prescribe kinds of waste material (called regulated waste material) for the purposes of this Act.

The rules may prohibit the export of regulated waste material unless conditions prescribed by the rules (called prescribed export conditions) are complied with.

A person commits an offence, or is liable to a civil penalty, if the person:

(a) exports regulated waste material in contravention of prescribed export conditions; or

(b) makes false or misleading representations about regulated waste material that is entered for export.

The Minister may grant an exemption from one or more provisions of this Act in relation to regulated waste material. An exemption remains in force for up to 12 months, and may be granted subject to conditions. An exemption can be revoked.

The Minister may, on application by a person, grant the person an export licence to carry out a kind of export operations in relation to a kind of regulated waste material.

An export licence is subject to certain conditions and it may remain in force for a specified period or until a specified event occurs. It cannot remain in force for more than 3 years.

An export licence may be varied, renewed, suspended or revoked.

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The holder of an export licence must comply with certain obligations, including complying with licence conditions and notifying the Minister of specified events. The Minister may also give written directions to the holder of an export licence which must be complied with.

The Minister must publish certain information on the Department's website about exemptions and export licences that have been granted, including the name of the holder of an exemption or licence, and the kind of regulated waste material that is covered by an exemption or licence. The Minister must also prepare a quarterly report containing this information.

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Part 2—Exporting waste material

17 Rules may prescribe waste material for the purposes of this Act

(1) The rules may prescribe a kind of waste material for the purposes of this Act.

Note: For prescribing by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) Waste material prescribed for the purposes of subsection (1) is ***regulated waste material***.

18 Rules may prohibit export of regulated waste material subject to conditions

(1) The rules may prohibit the export of regulated waste material unless conditions prescribed by the rules are complied with.

Note: Failure to comply with prescribed export conditions, which must be met before the regulated waste material is exported, is an offence and a civil penalty provision (see section 20).

(2) Without limiting subsection (1), the rules may prescribe conditions in relation to the export of regulated waste material that:

(a) require the waste material to be exported:

(i) in accordance with an export licence; or

(ii) in any other way prescribed by the rules; or

(b) require export operations to be carried out in relation to the waste material:

(i) in accordance with an export licence; or

(ii) in any other way prescribed by the rules; or

(c) require the exporter to give an export declaration to the Minister before the waste material is exported; or

(d) require the exporter to hold either or both of the following:

(i) an export licence covering the waste material;

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(ii) another kind of permission, consent or approval, granted as prescribed by the rules, to export the waste material.

(3) Without limiting paragraph (2)(c), the rules may require the export declaration to be given within a specified period or before a specified event occurs.

19 Export declaration—general requirements

(1) An export declaration must:

(a) if the Minister has approved, in writing, a manner for giving the declaration—be given in an approved manner; and

(b) if the Minister has approved a form for the declaration:

(i) include the information required by the form; and

(ii) be accompanied by any documents required by the form; and

(c) include the information (if any) prescribed by the rules; and

(d) be accompanied by any documents prescribed by the rules; and

(e) be signed and dated by the exporter of the regulated waste material to which the declaration relates.

Note 1: The export of regulated waste material may be prohibited unless an export declaration relating to the waste material is given (see section 18 and rules made for the purposes of that section).

Note 2: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 146 and 147 of this Act and sections 137.1 and 137.2 of the *Criminal Code*).

(2) An export declaration is taken not to have been given if the declaration does not comply with the requirements in subsection (1).

(3) To avoid doubt, the Minister may approve:

(a) different forms for export declarations in relation to different kinds of regulated waste material; or

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(b) a single form for an export declaration for the export of consignments of more than one kind of regulated waste material.

20 Exporting regulated waste material—non-compliance with prescribed export conditions

(1) A person contravenes this subsection if:
  (a) the person exports waste material; and
  (b) the waste material is regulated waste material; and
  (c) the export of the waste material is prohibited unless prescribed export conditions are complied with; and
  (d) prescribed export conditions are not complied with.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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

Civil penalty provision

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

Civil penalty: 600 penalty units.

When waste material is exported

(5) For the purposes of this section, waste material is exported when the conveyance transporting the waste material from Australia starts its journey to a place outside Australia (whether or not that place is the intended final overseas destination for the waste material).

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21 Knowingly making false or misleading representation about regulated waste material that is entered for export

(1) A person contravenes this subsection if:

(a) waste material is entered for export by the person; and

(b) the waste material is regulated waste material; and

(c) the export of the waste material is prohibited unless prescribed export conditions are complied with; and

(d) at the time the waste material is entered for export:

(i) the person represents (either expressly or by necessary implication) that the prescribed export conditions applicable, at or before that time, in relation to the export of the waste material have been complied with; and

(ii) the person does so knowing that the representation is false or misleading.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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

Civil penalty provision

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

Civil penalty: 600 penalty units.

Exception

(5) Subsection (1) does not apply if the representation is not false or misleading in a material particular.

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Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

22 Recklessly making false or misleading representation about regulated waste material that is entered for export

(1) A person contravenes this subsection if:

(a) waste material is entered for export by the person; and

(b) the waste material is regulated waste material; and

(c) the export of the waste material is prohibited unless prescribed export conditions are complied with; and

(d) at the time the waste material is entered for export:

(i) the person represents (either expressly or by necessary implication) that the prescribed export conditions applicable, at or before that time, in relation to the export of the waste material have been complied with; and

(ii) the person does so reckless as to whether the representation is false or misleading.

Fault-based offence

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

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

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

Civil penalty provision

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

Civil penalty: 360 penalty units.

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Exception

(5) Subsection (1) does not apply if the representation is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

23 Knowingly making false or misleading representation in relation to an export declaration

(1) A person contravenes this subsection if:
  (a) waste material is entered for export by the person; and
  (b) the waste material is regulated waste material; and
  (c) at the time the waste material is entered for export:
    (i) the person makes a representation (either expressly or by necessary implication) in relation to any matters that are to be stated in an export declaration; and
    (ii) the person does so knowing that the representation is false or misleading.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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

Civil penalty provision

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

Civil penalty: 600 penalty units.

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Exception

(5) Subsection (1) does not apply if the representation is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

24 Recklessly making false or misleading representation in relation to an export declaration

(1) A person contravenes this subsection if:
  (a) waste material is entered for export by the person; and
  (b) the waste material is regulated waste material; and
  (c) at the time the waste material is entered for export:
    (i) the person makes a representation (either expressly or by necessary implication) in relation to any matters that are to be stated in an export declaration; and
    (ii) the person does so reckless as to whether the representation is false or misleading.

Fault-based offence

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

Penalty: Imprisonment for 3 years or 180 penalty units, or both.

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

Civil penalty provision

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

Civil penalty: 360 penalty units.

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Exception

(5) Subsection (1) does not apply if the representation is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

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Part 3—Exemptions

25 Application for exemption

An application for an exemption from one or more provisions of this Chapter or rules made for the purposes of this Chapter in relation to regulated waste material may be made to the Minister by:

(a) a person who wishes to export regulated waste material; or

(b) a person prescribed by the rules.

Note: See sections 172, 173 and 174 for additional matters relating to applications.

26 Minister must decide whether to grant exemption

(1) On receiving an application made under section 25 for an exemption, the Minister must decide:

(a) to grant the exemption; or

(b) to refuse to grant the exemption.

Note: A decision under this subsection is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

(2) The Minister may grant the exemption if the Minister is satisfied, having regard to any matter prescribed by the rules and any other matter that the Minister considers relevant, that:

(a) any requirements prescribed by the rules are met; and

(b) it is appropriate to grant the exemption.

Note: An exemption generally must not be varied (see subsection 30(1)).

(3) In considering whether it is appropriate to grant the exemption, the Minister:

(a) must have regard to the objects of this Act; and

(b) may have regard to any other matter.

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(4) If the Minister grants the exemption, the Minister must:
  (a) decide that the exemption remains in force until a specified event occurs (which must not occur more than 12 months after the day the exemption takes effect); or
  (b) decide that the exemption remains in force for a specified period (which cannot be more than 12 months after the day the exemption takes effect).

(5) The Minister may decide that the exemption remains in force for a specified period under paragraph (4)(b) even if rules made for the purposes of subsection 29(2) apply in relation to the exemption.

27 Exemption may be granted subject to conditions

(1) The Minister may grant an exemption in relation to regulated waste material, subject to any conditions that the Minister considers are necessary.

Note: Conditions of an exemption may be varied (see section 30).

(2) In considering whether it is necessary to impose conditions on an exemption, the Minister must have regard to:
  (a) the objects of this Act; and
  (b) the matters (if any) prescribed by the rules.

(3) A person contravenes this subsection if:
  (a) the person is the holder of an exemption in force under this Part; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes a condition of the exemption.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 600 penalty units.

28 Notice of decision

Instrument of exemption

(1) If the Minister decides to grant an exemption in relation to regulated waste material, the Minister must give the applicant for the exemption an instrument of exemption stating the following:

(a) the kind of regulated waste material covered by the exemption;

(b) if applicable, each place to which the regulated waste material is to be exported under the exemption;

(c) the reasons why the Minister is satisfied that it is appropriate to grant the exemption;

(d) the provisions of this Act covered by the exemption;

(e) the day (which must not be before the grant) when the exemption takes effect;

(f) that the exemption remains in force:

(i) until a specified event occurs; or

(ii) for a specified period;

(g) if the exemption remains in force until a specified event occurs—the specified event;

(h) if the exemption remains in force for a specified period—the period;

(i) any conditions of the exemption;

(j) any other information prescribed by the rules.

Note: For the purposes of paragraph (f), an exemption cannot remain in force for more than 12 months (see subsection 26(4)).

(2) An instrument of exemption given under subsection (1) is not a legislative instrument.

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Notice of refusal

(3) If the Minister decides to refuse to grant an exemption, the Minister must notify the applicant, in writing, of the decision. The notice must include the reasons for the decision.

29 Period of effect of exemption

(1) An exemption:
  (a) takes effect on the day stated in the instrument of exemption under paragraph 28(1)(e); and
  (b) remains in force until the earliest of the following:
    (i) if the exemption remains in force until a specified event occurs—the event occurs;
    (ii) if the exemption remains in force for a specified period—the end of the specified period;
    (iii) if applicable—the end of the period prescribed by the rules for the purposes of subsection (2);
    (iv) the exemption is revoked under section 31.

(2) The rules may prescribe the period during which an exemption remains in force (which must not exceed 12 months). The rules may apply in relation to:
  (a) exemptions generally; or
  (b) exemptions for a kind of regulated waste material; or
  (c) exemptions in relation to a place to which the regulated waste material may be exported.

30 Variation of conditions of exemption

(1) Except as provided by subsection (2), an exemption that is in force under this Part must not be varied.

Note: If changes to an exemption are needed, an application for a new exemption must be made.

(2) If the Minister considers it necessary to do so, the Minister may vary the conditions of an exemption that is in force under this Part (including by imposing new conditions).

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(3) In considering whether it is necessary to vary the conditions of an exemption, the Minister must have regard to:
  (a) the objects of this Act; and
  (b) the matters (if any) prescribed by the rules.

(4) If the Minister varies the conditions of an exemption, the Minister must give the holder of the exemption a written notice stating the following:
  (a) the varied conditions and any new conditions;
  (b) the reason for varying the conditions;
  (c) the day the varied conditions take effect;
  (d) any other information prescribed by the rules.

31 Revocation of exemption

(1) The Minister may revoke an exemption that is in force under this Part.

(2) In considering whether to revoke an exemption, the Minister must have regard to:
  (a) the objects of this Act; and
  (b) the matters (if any) prescribed by the rules.

(3) If the Minister decides to revoke an exemption, the Minister must give the holder of the exemption a written notice stating the following:
  (a) that the exemption is revoked;
  (b) the reasons for the revocation;
  (c) the day the revocation takes effect.

32 Effect of exemption

If:
  (a) a kind of regulated waste material is, or is to be, exported; and

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(b) the export of the regulated waste material is covered by an exemption from one or more provisions of this Act (the ***exempted provisions***);

the exempted provisions do not apply in relation to the export of the regulated waste material.

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Part 4—Grant of export licence

33 Application for export licence

(1) A person may apply to the Minister for an export licence to carry out a kind of export operations in relation to a kind of regulated waste material.

Note: See sections 172, 173 and 174 for additional matters relating to applications.

(2) An application:

(a) may relate to more than one kind of regulated waste material; and

(b) may relate to more than one kind of export operations; and

(c) may specify one or more places to which the regulated waste material is to be exported.

Note: The export of a kind of regulated waste material may be prohibited unless the exporter holds an export licence that covers the export of waste material of that kind (see section 18 and rules made for the purposes of that section).

34 Minister must decide whether to grant export licence

(1) On receiving an application for an export licence, the Minister must decide:

(a) to grant the applicant an export licence; or

(b) to refuse to grant the applicant an export licence.

Note 1: See sections 172, 173 and 174 for additional matters relating to applications.

Note 2: If the application is for an export licence for more than one kind of regulated waste material for export to more than one place, the Minister may decide to grant an export licence for some or all of those kinds of waste material for export to some or all of those places.

Note 3: If the application is for an export licence to carry out more than one kind of export operations in relation to more than one kind of regulated waste material for export to more than one place, the

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Minister may decide to grant the applicant an export licence to carry out some or all of those kinds of export operations in relation to some or all of those kinds of waste material for export to some or all of those places.

Note 4: A decision to refuse to grant an export licence is a reviewable decision (see section 151) and the Minister must give the applicant written notice of the decision (see section 152).

(2) In deciding whether to grant the applicant an export licence, the Minister must have regard to the following matters:

(a) the objects of this Act;

(b) whether the applicant is a fit and proper person;

(c) whether all relevant Commonwealth liabilities of the applicant have been paid;

(d) if one or more relevant Commonwealth liabilities of the applicant have not been paid—whether the non-payment is due to exceptional circumstances;

(e) whether the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if granted, would be subject;

(f) any other matters prescribed by the rules.

Note 1: The Minister must have regard to the matters in section 175 in considering whether the applicant is a fit and proper person for the purposes of paragraph (b).

Note 2: For the purposes of paragraph (c), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 181).

(3) In deciding whether to grant the applicant an export licence, the Minister may have regard to any other matter that the Minister considers relevant.

(4) If the Minister grants the applicant an export licence, the Minister must:

(a) decide that the licence remains in force until a specified event occurs (which must not occur more than 3 years after the day the licence takes effect); or

(b) set an expiry date for the licence (which cannot be more than 3 years after the day the licence takes effect).

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(5) The Minister may set an expiry date for the export licence under paragraph (4)(b) even if rules made for the purposes of subsection 37(5) apply in relation to the licence.

35 Conditions of export licence

(1) An export licence is subject to:

(a) the conditions provided by this Act; and

(b) the conditions prescribed by the rules (other than any of those conditions that the Minister decides are not to be conditions of the licence); and

(c) any additional conditions that the Minister considers appropriate and that are specified in the licence.

Note 1: See subsection 64(4) for a condition of an export licence.

Note 2: The holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 59).

Note 3: An export licence may be suspended or revoked if a condition of the licence is contravened (see sections 46 and 54).

Note 4: A decision to grant an export licence subject to additional conditions is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

(2) Without limiting paragraph (1)(b), the rules may prescribe conditions in relation to any or all of the following:

(a) the holder of the export licence;

(b) a kind of regulated waste material;

(c) a kind of export operations.

(3) Without limiting paragraph (1)(b) or (c), the rules may prescribe conditions, and the Minister may impose conditions:

(a) that are required to be complied with before or after the export of the waste material to which the conditions relate; or

(b) that relate to the objects of this Act.

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(4) For the purposes of this Act, conditions to which an export licence is subject under subsection (1) or section 40 are conditions of the licence.

36 Matters to be stated in export licence

(1) An export licence must:
  (a) be in writing; and
  (b) be given to the applicant to whom it was granted.

(2) An export licence must state the following information:
  (a) the number allocated to the licence;
  (b) each kind of regulated waste material covered by the licence;
  (c) each kind of export operations covered by the licence;
  (d) if applicable, each place to which a kind of regulated waste material covered by the licence may be exported;
  (e) the day the licence takes effect;
  (f) that the licence remains in force:
    (i) until a specified event occurs; or
    (ii) for a specified period;
  (g) if the licence remains in force until a specified event occurs—the specified event;
  (h) if the licence remains in force for a specified period—the expiry date for the licence;
  (i) any conditions prescribed by the rules that the Minister has decided are not to be conditions of the licence;
  (j) any additional conditions of the licence;
  (k) any other information prescribed by the rules.

Note: A licence cannot remain in force for more than 3 years (see subsection 34(4)).

37 Period of effect of export licence

(1) If an export licence is expressed to remain in force until a specified event occurs, the licence remains in force until the event occurs, unless it is earlier revoked under Part 8.

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(2) If there is an expiry date for an export licence (including an export licence that has been renewed under Part 5), the licence remains in force until the end of that expiry date unless:
  (a) the licence is renewed under Part 5 on or before that date; or
  (b) the licence is revoked under Part 8 on or before that date.

(3) There is an expiry date for an export licence if:
  (a) rules made for the purposes of subsection (5) apply in relation to the export licence; or
  (b) an expiry date for the export licence set under subsection 34(4) or 39(5) or paragraph 44(1)(c) is in force in relation to the export licence.

(4) The ***expiry date*** for an export licence is:
  (a) if rules made for the purposes of subsection (5) apply in relation to the export licence and no expiry date set under subsection 34(4) or 39(5) or paragraph 44(1)(c) is in force in relation to the export licence—the last day of the period prescribed by the rules; or
  (b) if an expiry date for the export licence set under subsection 34(4) or 39(5) or paragraph 44(1)(c) is in force in relation to the export licence—that date.

Note: The expiry date cannot be more than 3 years after the day the licence takes effect (see paragraph 34(4)(b)).

(5) The rules may prescribe the period during which an export licence remains in force (which must not exceed 3 years). The rules may apply in relation to:
  (a) export licences generally; or
  (b) export licences for a kind of regulated waste material and, if applicable, a place to which the regulated waste material may be exported; or
  (c) export licences for a kind of export operations in relation to a kind of regulated waste material and, if applicable, a place to which the regulated waste material may be exported.

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Part 5—Renewal of export licence

38 Application to renew export licence

(1) This section applies in relation to an export licence (other than a licence that is suspended wholly or in part under Part 7) if there is an expiry date for the licence.

Note: See subsections 37(3) and (4) in relation to the expiry date for an export licence.

(2) The holder of the export licence may apply to the Minister to renew the licence.

Note: See sections 172, 173 and 174 for additional matters relating to applications.

(3) An application for renewal:

(a) may relate to more than one kind of regulated waste material; and

(b) may relate to more than one kind of export operations; and

(c) may specify one or more places to which the regulated waste material is to be exported.

(4) An application for renewal must be made:

(a) within the period prescribed by the rules; or

(b) if the Minister allows a longer period—within that longer period.

(5) If an application to renew an export licence is made after the period applying under subsection (4):

(a) the application is taken to be an application for a new export licence; and

(b) Part 4 applies in relation to the application; and

(c) the other provisions of this Part do not apply in relation to the application.

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39 Minister must decide whether to renew export licence

(1) On receiving an application to renew an export licence, the Minister must decide:

(a) to renew the licence; or

(b) to refuse to renew the licence.

Note 1: See sections 172, 173 and 174 for additional matters relating to applications.

Note 2: If the application is to renew the export licence for more than one kind of regulated waste material for export to more than one place, the Minister may decide to renew the licence for some or all of those kinds of waste material for export to some or all of those places.

Note 3: If the application is to renew the export licence to carry out more than one kind of export operations in relation to more than one kind of regulated waste material for export to more than one place, the Minister may decide to renew the licence to carry out some or all of those kinds of export operations in relation to some or all of those kinds of waste material for export to some or all of those places.

Note 4: A decision to refuse to renew an export licence is a reviewable decision (see section 151) and the Minister must give the applicant written notice of the decision (see section 152).

(2) If an export licence would, apart from this subsection, expire before the application to renew the licence is decided, then the export licence is taken to continue in force until:

(a) if the application to renew is refused—the refusal takes effect; or

(b) if the licence is renewed in response to the application—the day the renewed licence takes effect.

(3) In deciding whether to renew an export licence, the Minister must have regard to the following matters:

(a) the objects of this Act;

(b) whether the applicant is a fit and proper person;

(c) whether all relevant Commonwealth liabilities of the applicant have been paid;

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(d) if one or more relevant Commonwealth liabilities of the applicant have not been paid—whether the non-payment is due to exceptional circumstances;

(e) whether the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if renewed, would be subject;

(f) any other matters prescribed by the rules.

Note 1: The Minister must have regard to the matters in section 175 in considering whether the applicant is a fit and proper person for the purposes of paragraph (b).

Note 2: For the purposes of paragraph (c), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 181).

(4) In deciding whether to renew an export licence, the Minister may have regard to any other matter that the Minister considers relevant.

(5) If the Minister renews the export licence, the Minister must:

(a) decide that the licence remains in force until a specified event occurs (which cannot occur more than 3 years after the day the renewed licence takes effect); or

(b) set an expiry date for the licence (which cannot be more than 3 years after the day the renewed licence takes effect).

Note: A decision under this subsection is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

(6) The Minister may set an expiry date for the export licence under paragraph (5)(b) even if rules made for the purposes of subsection 37(5) apply in relation to the licence.

40 Conditions of renewed export licence

(1) If the Minister renews an export licence, the renewed licence is subject to:

(a) the conditions provided by this Act; and

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(b) the conditions prescribed by rules made for the purposes of paragraph 35(1)(b) (other than any of those conditions that the Minister decides are not to be conditions of the licence); and

(c) any additional conditions that the Minister considers appropriate and that are specified in the licence.

Note 1: See subsection 64(4) for a condition of an export licence.

Note 2: The holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 59).

Note 3: An export licence may be suspended or revoked if a condition of the licence is contravened (see sections 46 and 54).

Note 4: A decision to renew an export licence subject to additional conditions is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

(2) Without limiting paragraph (1)(c), the Minister may impose conditions:

(a) that are required to be complied with before or after the export of the waste material to which the conditions relate; or

(b) that relate to the objects of this Act.

41 Matters to be stated in renewed export licence

If an export licence is renewed, the Minister must give the applicant a new export licence stating the information referred to in subsection 36(2).

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Part 6—Variation of export licence

Division 1—Application by holder

42 Application by holder to vary export licence

(1) The holder of an export licence may apply to the Minister:

(a) to vary the conditions of the licence (including by imposing new conditions); or

(b) to vary the licence in relation to any of the following matters (including by adding or removing any of those matters):

(i) kinds of regulated waste material;

(ii) kinds of export operations;

(iii) if applicable, places to which regulated waste material may be exported; or

(c) if the licence is expressed to remain in force until a specified event occurs—to vary the licence by varying the specified event (which must not occur more than 3 years after the day the licence took effect); or

(d) if there is an expiry date for the licence (whether under paragraph 37(4)(a) or (b))—to vary the licence by setting a different expiry date for the licence (which must not be more than 3 years after the day the licence took effect); or

(e) to vary the licence to make a minor change to a matter stated in the licence (including to correct a minor or technical error); or

(f) to vary any other aspect of the licence.

Note: See sections 172, 173 and 174 for additional matters relating to applications.

(2) An application cannot be made for a variation that would extend the period in which the licence is in force beyond 3 years from the day the licence took effect.

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(3) If the Minister receives an application to make a variation, the Minister must decide:

(a) to make the variation; or

(b) to refuse to make the variation.

Note 1: See section 174 for matters relating to dealing with applications.

Note 2: A decision to refuse the application is a reviewable decision (see section 151) and the Minister must give the applicant written notice of the decision (see section 152).

(4) In deciding whether to make a variation, the Minister must have regard to the following matters:

(a) the objects of this Act;

(b) whether all relevant Commonwealth liabilities of the applicant have been paid;

(c) if one or more relevant Commonwealth liabilities of the applicant have not been paid—whether the non-payment is due to exceptional circumstances;

(d) whether the applicant is, and is likely to continue to be, able to comply with the conditions to which the export licence, if varied, would be subject;

(e) any other matters prescribed by the rules.

Note: For the purposes of paragraph (b), a relevant Commonwealth liability of a person is taken to have been paid in certain circumstances (see section 181).

(5) Despite subsection (4), the Minister need not have regard to those matters if the application is for a variation:

(a) to set an earlier expiry date for the licence; or

(b) to make a minor change to a matter stated in the licence (including to correct a minor or technical error); or

(c) of a kind prescribed by the rules.

(6) In deciding whether to make a variation, the Minister may have regard to any other matter that the Minister considers relevant.

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43 Notice of variation

(1) If the Minister varies an export licence under paragraph 42(3)(a), the Minister must give the holder of the licence written notice of the variation.

(2) The notice must state the following:

(a) details of the variation;

(b) if the variation is of the conditions of the export licence—the varied conditions;

(c) the day the variation takes effect;

(d) any other information prescribed by the rules.

(3) If the export licence needs to be changed to take account of the variation, the Minister must give the holder of the licence a new export licence including the variation.

Note: The export licence, as varied, remains in force as provided by section 37.

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Division 2—Variation by Minister

44 Minister may vary export licence

(1) The Minister may do any of the following in relation to an export licence:

(a) vary the conditions of the licence (including by imposing new conditions);

(b) vary the licence in relation to any of the following matters (including by adding or removing any of those matters):

(i) kinds of regulated waste material;

(ii) kinds of export operations;

(iii) if applicable, places to which regulated waste material may be exported;

(c) if the licence is expressed to remain in force until a specified event occurs—vary the licence by varying the specified event (which must not occur more than 3 years after the day the licence took effect);

(d) if there is an expiry date for the licence (whether under paragraph 37(4)(a) or (b))—vary the licence by setting a different expiry date for the licence (which must not be more than 3 years after the day the licence took effect);

(e) vary the licence to make a minor change to a matter stated in the licence (including to correct a minor or technical error);

(f) vary any other aspect of the licence.

Note: Certain decisions under this subsection are reviewable decisions (see section 151).

(2) The Minister may vary the export licence only if the Minister reasonably believes that:

(a) a condition of the licence has been, or is being, contravened; or

(b) it is necessary to do so to ensure compliance with the requirements of this Act in relation to the regulated waste material and the export operations covered by the licence; or

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(c) it is necessary to do so to prevent or lessen a threat to human or environmental health; or

(d) the holder is not a fit and proper person; or

(e) it is necessary to do so:

(i) to take account of an event notified under section 61; or

(ii) to correct a minor or technical error; or

(f) the holder of the licence:

(i) failed to comply with a direction given to the holder by an authorised officer or the Minister; or

(ii) failed to comply with a request by an authorised officer to provide information or a document; or

(iii) failed to provide facilities and assistance to an auditor as required by section 115; or

(iv) failed to comply with a request made by an auditor under section 113; or

(g) the holder of the licence:

(i) intimidated a person performing functions or exercising powers under this Act; or

(ii) hindered a person, or prevented a person from, performing functions or exercising powers under this Act; or

(h) the holder of the licence or any other person who participates in the management or control of the holder's export business (as provided by section 62):

(i) made a false or misleading statement in an application under this Act; or

(ii) gave false or misleading information or documents to the Minister or to another person performing functions or exercising powers under this Act; or

(iii) gave false or misleading information or documents to a person under a prescribed law; or

(i) the licence needs to be varied for any other reason prescribed by the rules.

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Note: The Minister must have regard to the matters in section 175 in considering whether the holder is a fit and proper person for the purposes of paragraph (d).

(3) The Minister must not vary the export licence unless the Minister has given a written notice to the holder of the licence in accordance with subsection (4).

(4) The notice must:
  (a) specify each proposed variation; and
  (b) specify the grounds for each proposed variation; and
  (c) subject to subsection (5), request the holder of the export licence to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the proposed variation should not be made; and
  (d) include a statement setting out the holder's right to seek review of a decision to make the proposed variation.

(5) The notice is not required to include the request referred to in paragraph (4)(c) if the Minister reasonably believes that the proposed variation is necessary to prevent or lessen a serious and imminent threat to human or environmental health.

(6) Subsections (2) and (3) do not apply to a variation under:
  (a) paragraph (1)(d) to set a later expiry date for an export licence; or
  (b) paragraph (1)(e).

45 Notice of variation

(1) If the Minister makes a variation under subsection 44(1) in relation to an export licence, the Minister must give the holder of the licence written notice of the variation.

(2) The notice must state the following:
  (a) details of the variation;
  (b) if the variation is of the conditions of the export licence—the varied conditions and any new conditions;
  (c) if the variation affects the period of effect of the licence:

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(i) the expiry date for the licence under paragraph 37(4)(a) or (b) (whichever applies); or

(ii) if the licence is expressed to remain in force until a specified event occurs—that the licence remains in force until the event occurs or is earlier revoked;

(d) the date the variation takes effect;

(e) any other information prescribed by the rules.

(3) If the holder was given a notice under subsection 44(3) that included the request referred to in paragraph 44(4)(c), the variation must not take effect before the earlier of the following:

(a) the day after any response to the request is received by the Minister;

(b) the end of 14 days after the notice was given.

(4) If the export licence needs to be changed to take account of the variation, the Minister must give the holder of the licence a new export licence including the variation.

Note: The export licence, as varied, remains in force as provided by section 37.

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Part 7—Suspension of export licence

46 Grounds for suspension—general

(1) The Minister may suspend an export licence in relation to one or more kinds of regulated waste material, one or more kinds of export operations or one or more places to which the regulated waste material may be exported, if the Minister reasonably believes any of the following:

(a) a condition of the licence has been, or is being, contravened;

(b) the holder of the licence has contravened a requirement of this Act in relation to the licence;

(c) it is necessary to do so to prevent or lessen a threat to human or environmental health;

(d) the holder of the licence is not a fit and proper person;

(e) the holder of the licence:

(i) failed to comply with a direction given to the holder by an authorised officer or the Minister; or

(ii) failed to comply with a request by an authorised officer to provide information or a document; or

(iii) failed to provide facilities and assistance to an auditor as required by section 115; or

(iv) failed to comply with a request made by an auditor under section 113;

(f) the holder of the licence:

(i) intimidated a person performing functions or exercising powers under this Act; or

(ii) hindered a person, or prevented a person from, performing functions or exercising powers under this Act;

(g) the holder of the licence or any other person who participates in the management or control of the holder's export business (as provided by section 62):

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(i) made a false or misleading statement in an application under this Act; or

(ii) gave false or misleading information or documents to the Minister or to another person performing functions or exercising powers under this Act; or

(iii) gave false or misleading information or documents to a person under a prescribed law;

(h) the holder of the licence is or was an associate of a person referred to in paragraph 63(1)(a), (b), (c) or (d);

(i) a ground prescribed by the rules exists.

Note 1: The Minister must have regard to the matters in section 175 in considering whether the holder is a fit and proper person for the purposes of paragraph (d).

Note 2: A suspension must not be for more than 12 months (see section 49).

Note 3: A decision to suspend an export licence under this section is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

Notice of proposed suspension

(2) The Minister must not suspend an export licence under this section unless the Minister has given a written notice to the holder of the licence in accordance with subsection (3).

(3) The notice must:

(a) specify each kind of regulated waste material, each kind of export operations and each place, in relation to which the export licence is proposed to be suspended (as applicable); and

(b) specify the grounds for the proposed suspension; and

(c) subject to subsection (4), request the holder of the export licence to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the licence should not be suspended as proposed; and

(d) include a statement setting out the holder's right to seek review of a decision to suspend the licence as proposed.

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(4) The notice is not required to include the request referred to in paragraph (3)(c) if the Minister reasonably believes that the suspension is necessary to prevent or lessen a serious and imminent threat to human or environmental health.

47 Grounds for suspension—overdue relevant Commonwealth liability

Notice of proposed suspension

(1) The Minister may suspend an export licence in relation to all kinds of regulated waste material and all kinds of export operations if:

(a) a relevant Commonwealth liability of the holder of the licence (the ***debtor***) is more than 30 days overdue; and

(b) the Minister has given a written notice to the debtor in accordance with subsection (2); and

(c) within 8 days after the notice is given:

(i) the relevant Commonwealth liability has not been paid; or

(ii) the debtor has not entered into an arrangement with the Minister to pay the relevant Commonwealth liability.

Note 1: A suspension must not be for more than 12 months (see section 49).

Note 2: A decision to suspend an export licence under this section is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

Note 3: If the Minister suspends an export licence under this section, the Minister may revoke the export licence in certain circumstances (see section 55).

(2) The notice must:

(a) state that a relevant Commonwealth liability of the debtor in relation to an export licence is more than 30 days overdue; and

(b) state that the Minister may suspend the export licence in relation to all kinds of regulated waste material and all kinds of export operations if, within 8 days after the notice is given:

(i) the relevant Commonwealth liability is not paid; or

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(ii) the debtor has not entered into an arrangement with the Minister to pay the relevant Commonwealth liability; and

(c) include a statement setting out the debtor's right to seek review of a decision to suspend the export licence.

Minister may direct that activities not be carried out

(3) If the Minister suspends an export licence under subsection (1), the Minister may refuse to carry out, and direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 107 (general provisions relating to directions).

Action under this section does not affect liability to pay relevant Commonwealth liability

(4) Action by the Minister under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

48 Notice of suspension

(1) If the Minister decides to suspend an export licence under this Part, the Minister must give the holder of the licence a written notice stating the following:

(a) that the export licence is to be suspended, for the period specified in the notice, in relation to all or specified kinds of regulated waste material, all or specified kinds of export operations and all or specified places to which the regulated waste material may be exported (as applicable);

(b) the reasons for the suspension;

(c) the day the suspension is to start;

(d) if the licence is suspended for a period—the period of the suspension;

(e) if the licence is suspended until a specified event occurs or action is taken—the event or action.

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Note: The notice must also state the matters referred to in section 152.

(2) If the holder of the export licence was given a notice under subsection 46(2) that included the request referred to in paragraph 46(3)(c), the suspension must not start before the earlier of the following:

(a) the day after any response to the request is received by the Minister;

(b) the end of 14 days after the notice was given.

49 Period of suspension

(1) A suspension of an export licence under this Division must not be for more than 12 months.

(2) The Minister may vary the period of a suspension of an export licence under this Division by written notice to the holder of the licence. However, the total period of a suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

50 Revocation of suspension

The Minister may revoke a suspension of an export licence under this Division by written notice to the holder of the licence.

51 Effect of suspension

(1) If an export licence is suspended wholly or in part under this Part:

(a) export operations covered by the suspension must not be carried out; and

(b) the licence remains in force while it is suspended; and

(c) subject to rules made for the purposes of subsection (2), the requirements of this Act in relation to the licence (including the conditions of the licence) must be complied with while the licence is suspended.

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(2) The rules may prescribe requirements of this Act (including conditions of an export licence) that are not required to be complied with during any period when the licence is suspended.

52 Export operations must not be carried out if export licence is suspended

(1) A person contravenes this subsection if:
  (a) the person is the holder of an export licence; and
  (b) the person was given notice of suspension of the licence under subsection 48(1); and
  (c) export operations that were covered by the suspension were carried out after the suspension took effect.

Fault-based offence

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

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

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

Civil penalty: 240 penalty units.

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Part 8—Revocation of export licence

Division 1—Revocation requested by holder

53 Holder may request revocation

(1) The holder of an export licence (including a licence that is suspended wholly or in part under Part 7) may request the Minister to revoke the licence.

(2) A request under subsection (1) must:
  (a) be in writing; and
  (b) include the information (if any) prescribed by the rules.

(3) If the Minister receives a request from the holder of an export licence under subsection (1), the Minister must, by written notice to the holder, revoke the licence with effect on the day specified in the notice.

(4) Subsection (3) does not apply if, before the request under subsection (1) was made, the Minister:
  (a) had given the holder of the export licence a notice under subsection 54(2) in relation to the licence; and
  (b) had not decided whether to revoke the licence or not.

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Division 2—Revocation by Minister

54 Grounds for revocation—general

(1) The Minister may revoke an export licence (including a licence that is suspended wholly or in part under Part 7) if the Minister reasonably believes any of the following:

(a) a condition of the licence has been, or is being, contravened;

(b) the holder of the licence has contravened a requirement of this Act in relation to the licence;

(c) it is necessary to revoke the licence to prevent or lessen a threat to human or environmental health;

(d) the holder of the licence is not a fit and proper person;

(e) the holder of the licence:

(i) failed to comply with a direction given to the holder by an authorised officer or the Minister; or

(ii) failed to comply with a request by an authorised officer to provide information or a document; or

(iii) failed to provide facilities and assistance to an auditor as required by section 115; or

(iv) failed to comply with a request made by an auditor under section 113;

(f) the holder of the licence:

(i) intimidated a person performing functions or exercising powers under this Act; or

(ii) hindered a person, or prevented a person from, performing functions or exercising powers under this Act;

(g) the holder of the licence or any other person who participates in the management or control of the holder's export business (as provided by section 62):

(i) made a false or misleading statement in an application under this Act; or

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(ii) gave false or misleading information or documents to a person performing functions or exercising powers under this Act; or

(iii) gave false or misleading information or documents to a person under a prescribed law;

(h) the holder of the licence is or was an associate of a person referred to in paragraph 63(1)(a), (b), (c) or (d);

(i) a ground prescribed by the rules exists.

Note 1: The Minister must have regard to the matters in section 175 in considering whether the holder is a fit and proper person for the purposes of paragraph (d).

Note 2: A decision to revoke an export licence under this section is a reviewable decision (see section 151) and the Minister must give the former holder of the licence written notice of the decision (see section 152).

Notice of proposed revocation

(2) The Minister must not revoke an export licence under this section unless the Minister has given a written notice to the holder of the licence in accordance with subsection (3).

(3) The notice must:

(a) specify the grounds for the proposed revocation; and

(b) subject to subsection (4), request the holder of the export licence to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why the licence should not be revoked; and

(c) include a statement setting out the holder's right to seek review of a decision to revoke the licence.

(4) The notice is not required to include the request referred to in paragraph (3)(b) if the Minister reasonably believes that the revocation is necessary to prevent or lessen a serious and imminent threat to human or environmental health.

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55 Grounds for revocation—overdue relevant Commonwealth liability

(1) The Minister may revoke an export licence if:

(a) the licence is suspended under section 47 for non-payment of a relevant Commonwealth liability; and

(b) within 90 days after the start of the suspension:

(i) the relevant Commonwealth liability had not been paid; or

(ii) the person (the ***debtor***) who is liable to pay the relevant Commonwealth liability had not entered into an arrangement with the Minister to pay the relevant Commonwealth liability.

Note: A decision to revoke an export licence under this section is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

Minister may direct that activities not be carried out

(2) If the Minister revokes an export licence under subsection (1), the Minister may refuse to carry out, and direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the relevant Commonwealth liability has been paid.

Note: See also section 107 (general provisions relating to directions).

Action under this section does not affect liability to pay relevant Commonwealth liability

(3) Action by the Minister under this section does not affect the liability of the debtor to pay the relevant Commonwealth liability.

56 Notice of revocation

(1) If the Minister decides to revoke an export licence under this Division, the Minister must give the holder of the licence a written notice stating the following:

(a) that the licence is to be revoked;

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(b) the reasons for the revocation;

(c) the day the revocation is to take effect.

Note: The notice must also state the matters referred to in section 152.

(2) If the holder of the export licence was given a notice under subsection 54(2) that included the request referred to in paragraph 54(3)(b), the revocation must not take effect before the earlier of the following:

(a) the day after any response to the request is received by the Minister;

(b) the end of 14 days after the notice was given.

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Division 3—Other provisions

57 Export operations must not be carried out after export licence revoked

(1) A person contravenes this subsection if:
  (a) the person was the holder of an export licence; and
  (b) the person was given notice of revocation of the licence under subsection 53(3) or 56(1); and
  (c) export operations that were covered by the licence were carried out after the revocation took effect.

Fault-based offence

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

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

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

Civil penalty: 240 penalty units.

58 Minister may require action to be taken after export licence revoked

(1) This section applies if a person:
  (a) was given notice of revocation of an export licence under subsection 53(3) or 56(1); or
  (b) was the holder of an export licence revoked under Division 1 or 2.

(2) The Minister may, in writing, direct the person to take specified action, within a specified period after the export licence is revoked, in relation to the regulated waste material and export operations

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that were covered by the licence. The action must be action that is necessary for the purpose of achieving one or more objects of this Act.

(3) The direction must state that the person could commit an offence or be liable to a civil penalty if the person fails to comply with the direction.

Note: See also section 107 (general provisions relating to directions).

(4) A person contravenes this subsection if:
(a) the person is given a direction under subsection (2); and
(b) the person engages in conduct; and
(c) the conduct contravenes the direction.

Fault-based offence

(5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

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

Civil penalty: 240 penalty units.

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Part 9—Obligations of holders of export licences

59 Conditions of export licence must not be contravened

Export licence that is not suspended

(1) A person contravenes this subsection if:
  (a) the person is the holder of an export licence; and
  (b) the licence is not suspended wholly or in part under Part 7; and
  (c) a condition of the licence is contravened.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

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

Civil penalty: 600 penalty units.

Export licence that is suspended

(4) A person contravenes this subsection if:
  (a) the person is the holder of an export licence; and
  (b) the licence is suspended wholly or in part under Part 7; and
  (c) a condition of the licence is contravened; and
  (d) the condition is required to be complied with during the period of the suspension.

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Fault-based offence

(5) A person commits an offence if the person contravenes subsection (4).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(6) For the purposes of subsection (5), strict liability applies to paragraph (4)(d).

Civil penalty provision

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

Civil penalty: 600 penalty units.

60 Additional or corrected information in relation to application for licence etc.

(1) The holder of an export licence must comply with subsection (2) if:

(a) the holder becomes aware that information included in an application made by the holder under this Chapter, or information or a document given to the Minister in relation to such an application, was incomplete or incorrect; or

(b) a change prescribed by the rules occurs.

(2) The holder of the export licence must, as soon as practicable, give the Minister additional or corrected information, to the extent that it is relevant to assessing whether the requirements of this Act in relation to a matter covered by the licence have been, are being or will be complied with.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 145, 146 and 147 of this Act and sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

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Civil penalty provision

(3) A person is liable to a civil penalty if:
  (a) the person is required to give information to the Minister by subsection (2); and
  (b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

61 Holder of export licence must notify the Minister of certain events

(1) The holder of an export licence must notify the Minister, in writing, as soon as practicable after any of the following events occurs:
  (a) there is a change in the holder's business structure;
  (b) if the holder is an individual—the individual enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
  (c) if the holder is a corporation—the corporation:
    (i) enters into administration (within the meaning of section 435C of the *Corporations Act 2001*); or
    (ii) is to be wound up (whether by a court or voluntarily);
  (d) there is a change in the trading name, business address or contact details of the holder;
  (e) an event prescribed by the rules.

(2) A person contravenes this subsection if:
  (a) the person is required by subsection (1) to notify the Minister of an event; and
  (b) the person fails to comply with the requirement.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 60 penalty units.

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Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 250 penalty units.

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Part 10—Other matters

62 Persons who participate in the management or control of another person's export business

For the purposes of this Chapter, a person (the ***first person***) is taken to be a person who participates in the management or control of an export business of another person if:

(a) the first person has authority to direct the export operations, or an important or substantial part of the export operations, carried out by or in connection with the other person's export business; or

(b) the first person has authority to direct another person who has authority of the kind referred to in paragraph (a) in the exercise of that authority.

63 Minister's powers in relation to associates of holder of export licence

(1) This section applies if the Minister:

(a) refuses to grant an export licence to a person; or

(b) decides not to renew a person's export licence; or

(c) varies a person's export licence; or

(d) suspends a person's export licence (wholly or in part) under Part 7; or

(e) revokes a person's export licence under Division 2 of Part 8.

(2) The Minister may do either or both of the following, on one or more occasions:

(a) refuse to grant an export licence to an associate of a person referred to in subsection (1);

(b) if an associate of a person referred to in subsection (1) is or becomes the holder of an export licence—give the associate a written notice in accordance with subsection (3).

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(3) The notice must:

(a) specify the grounds on which the notice is given; and

(b) request the associate to give the Minister, within 14 days after the day the notice is given, a written statement showing cause why an export licence held by the associate:

(i) should not be suspended, or further suspended, under Part 7; or

(ii) should not be revoked under Division 2 of Part 8; and

(c) include a statement setting out the associate's right to seek review of a decision:

(i) to suspend, or further suspend, under Part 7 an export licence held by the associate; or

(ii) to revoke under Division 2 of Part 8 an export licence held by the associate.

64 Minister may give directions to holder of export licence

(1) The Minister may give written directions to the holder of an export licence.

Note 1: An authorised officer may also give a direction to the holder of the export licence (see section 106).

Note 2: See also section 107 (general provisions relating to directions).

(2) Without limiting subsection (1), directions may:

(a) require the holder of the licence to give the Minister specified information or documents relating to a kind of export operations carried out in relation to a kind of regulated waste material; and

(b) require the holder of the licence to allow the Minister, or a person with appropriate qualifications or expertise, to enter premises where a kind of export operations is being carried out in relation to a kind of regulated waste material covered by the licence.

(3) In considering whether to give a direction under subsection (1), the Minister must have regard to:

(a) the objects of this Act; and

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(b) any other matters prescribed by the rules.

(4) An export licence is subject to the condition that the holder of the licence must comply with any directions given to the holder under this section.

Note: The holder of an export licence may commit an offence or be liable to a civil penalty if a condition of the licence is contravened (see section 59).

(5) If a direction given to the holder of an export licence under subsection (1) is inconsistent with the rules or a condition of the licence, the direction prevails and the rules or condition, to the extent of the inconsistency, do not have any effect.

65 Publishing information about exemptions and export licences

(1) The Minister must publish on the Department's website the following information in relation to each exemption and export licence granted by the Minister under Part 3 or 4:

(a) the name of the holder of the exemption or licence;

(b) each kind of regulated waste material covered by the exemption or licence;

(c) the day the exemption or licence takes effect;

(d) whether the exemption or licence remains in force for a specified period or until a specified event occurs.

(2) However, the Minister must not publish any information under subsection (1) if the Minister is satisfied that:

(a) there is a risk that publishing the information might substantially prejudice the commercial interests of a person; and

(b) publishing the information is not in the public interest.

65A Quarterly reports

(1) The Minister must prepare a report in relation to exemptions and export licences for each quarter of each financial year.

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(2) The Minister must do so as soon as practicable after the end of each quarter of each financial year.

(3) The report must contain:

(a) the information set out in paragraphs 65(1)(a) to (d) for each exemption or export licence granted during that quarter; and

(b) the information (if any) prescribed by the rules.

(4) However, the Minister must not publish any information in the report if the Minister must not publish that information under section 65.

Note: In some circumstances, the Minister must not publish information about exemptions or export licences on the Department's website (see subsection 65(2)).

(5) The Minister must publish a copy of the report on the Department's website.

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Chapter 3—Product stewardship

Part 1—Introduction

66 Simplified outline of this Chapter

The Minister must also publish on the Department's website a document (called the Minister's priority list) each year that sets out a range of matters, including:

(a) a list of products in relation to which the Minister is proposing to consider whether some form of regulation under this Act might be appropriate; and

(b) the reasons why the Minister is proposing to give that consideration; and

(c) the actions that the Minister recommends be taken in relation to each listed product; and

(d) the times within which the Minister recommends the actions be taken.

The Minister must table each Minister's priority list in both Houses of Parliament and may also table a statement regarding the operation, performance and coverage of accredited voluntary arrangements.

There are 3 regimes relating to product stewardship under this Act.

Under voluntary product stewardship, voluntary arrangements in relation to products that are designed to further the objects of this Act may be accredited by an accrediting authority. A person is authorised to exercise the Commonwealth's intellectual property rights in a product stewardship logo if the exercise of those rights is in accordance with an accredited voluntary arrangement.

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Section 66

Under co-regulatory product stewardship, certain kinds of corporations (called liable parties) are required to be members of co-regulatory arrangements approved by the Minister.

These arrangements must have outcomes, specified in the rules, that are designed to further the objects of this Act. Administrators of approved co-regulatory arrangements are required to take all reasonable steps to ensure those outcomes are achieved in accordance with the rules.

Under mandatory product stewardship, rules may be made that require specified persons to take, or not to take, specified action in relation to products.

These requirements might include restricting the manufacture or import of products, prohibiting products from containing particular substances, labelling and packaging requirements and other requirements relating to the design of products or to the reusing, recycling, recovering, treating or disposing of products.

The Minister must publish on the Department's website specified information about every accredited voluntary arrangement and approved co-regulatory arrangement.

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Part 2—Minister's priority list

67 Minister's priority list

Minister's priority list

(1) The Minister must publish on the Department's website, before the end of each financial year, a document (a ***Minister's priority list***) that sets out the following:

(a) a list of products in relation to which the Minister is proposing to consider, during the next financial year, whether some form of regulation under this Act might be appropriate;

(b) the reason (or reasons) why the Minister is proposing to give that consideration;

(c) the actions that the Minister recommends be taken in relation to each listed product;

(d) the times within which the Minister recommends the actions be taken.

Example: For the purposes of paragraph (a), the Minister may consider whether to make rules under section 77 requiring specified persons to be members of an approved co-regulatory arrangement in relation to a product. The Minister may also consider whether to make rules for the purposes of section 92 in relation to mandatory product stewardship.

Consultations

(2) In preparing a Minister's priority list, the Minister must consult with:

(a) each State and Territory; and

(b) relevant Centres of Excellence (if any).

(2A) In preparing a Minister's priority list, the Minister may consult with one or more of the following:

(a) persons or organisations involved in, or advocating for, best practice in relation to the reuse, remanufacture, recycling and

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recovery of products, waste from products and waste material;

(b) industry groups;

(c) consumer groups;

(d) environmental groups;

(e) local government authorities;

(f) any other person or organisation the Minister considers should be consulted.

Matters to be considered

(2B) In preparing a list of products for inclusion in a Minister's priority list, the Minister must have regard to any relevant national waste policies or plans.

(3) In preparing a list of products for inclusion in a Minister's priority list, the Minister may have regard to any matter the Minister considers relevant, including:

(a) whether any of the products has been included in a Minister's priority list in a previous financial year and, if so, whether the actions recommended by the Minister were taken in relation to the product; and

(b) whether the product stewardship criteria are satisfied in relation to the products; and

(c) any information obtained from consultations under subsections (2) and (2A); and

(d) whether one or more of the following apply in relation to the products:

(i) reusing, recycling, recovering, treating or disposing of the products involves a significant cost to the Commonwealth, or State, Territory or local governments;

(ii) consumers are willing to pay for action that reduces the impact that the products have on the environment, or that substances contained in the products have on the environment, or on the health or safety of humans;

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(iii) taking action to reduce that impact will offer business opportunities to make a contribution to the economy.

Review of recommended action

(4) The Minister:

(a) must, after the recommended time for each recommended action in relation to each listed product, review whether the recommended action has been taken in relation to the product; and

(b) if the recommended action has not been taken in relation to the product within the recommended time—must:

(i) make further recommendations in relation to the product; or

(ii) decide that some form of regulation under this Act is appropriate in relation to the product.

68 Tabling of Minister's priority list and statement relating to product stewardship arrangements

Minister's priority list to be tabled in Parliament

(1) The Minister must cause a Minister's priority list to be tabled in both Houses of Parliament within 15 sitting days after the publication of the list.

Statement about accredited voluntary arrangements may be tabled in Parliament

(2) The Minister may at any time cause a statement to be tabled in each House of the Parliament regarding the operation, performance and coverage of accredited voluntary arrangements.

(3) Without limiting subsection (2), the statement may:

(a) name the persons who are authorised by an accredited voluntary arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo; and

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(b) name persons who the Minister considers could be, but are not currently, authorised by an accredited voluntary arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo; and

(c) set out the Minister's views in relation to the performance of an accredited voluntary arrangement by reference to the persons referred to in paragraphs (a) and (b).

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Part 3—Voluntary product stewardship

69 Exercising rights in product stewardship logo in accordance with accredited voluntary arrangement

A person is authorised to exercise the Commonwealth's intellectual property rights in a product stewardship logo if that exercise is in accordance with an accredited voluntary arrangement.

70 Accreditation of voluntary arrangements

(1) An ***accredited voluntary arrangement*** is a voluntary arrangement that is accredited in relation to a product in accordance with rules made for the purposes of this section.

Note 1: Obligations imposed by this Act in relation to voluntary arrangements and their administrators do not apply to an arrangement that is not accredited.

Note 2: A voluntary arrangement that does not meet the conditions in section 71 cannot be accredited, and the accrediting authority must refuse to accredit a voluntary arrangement in certain circumstances (see subsections (3) and (4) of this section and rules made for the purposes of this section).

(2) The rules may provide for or in relation to matters concerning the accreditation of voluntary arrangements in relation to a product.

(3) Without limiting subsection (2), the rules may provide for any or all of the following:

(a) who may apply for accreditation of a voluntary arrangement in relation to a product;

(b) the circumstances in which a person may apply for such an accreditation;

(c) who may make a decision on such an application (the ***accrediting authority***);

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(d) matters in relation to which the accrediting authority must be satisfied before accrediting a voluntary arrangement in relation to a product;

(e) grounds on which the accrediting authority may or must refuse to accredit a voluntary arrangement in relation to a product;

(f) the imposition of conditions by the accrediting authority on a voluntary arrangement's accreditation in relation to a product;

(g) cancellation by an accrediting authority of a voluntary arrangement's accreditation in relation to a product;

(h) the giving of information in relation to an accredited voluntary arrangement.

Note 1: See sections 172, 173 and 174 for additional matters relating to applications.

Note 2: The following are examples for the purposes of paragraph (f):

(a) a condition that the administrator of an accredited voluntary arrangement take reasonable steps to ensure the arrangement's outcomes are achieved;

(b) a condition relating to the exercise of the Commonwealth's intellectual property rights in the product stewardship logo in accordance with the arrangement.

Note 3: The rules may also provide for the making and retention of records (see section 142).

Preconditions to accreditation

(4) Without limiting subsection (2) or (3), the rules must require the accrediting authority to refuse to accredit a voluntary arrangement in relation to a product if the accrediting authority is satisfied that:

(a) an outcome of the arrangement in relation to the product will not further the objects of this Act; or

(b) the arrangement is unlikely to achieve one or more of those outcomes; or

(c) the product stewardship criteria are not satisfied in relation to the product; or

(d) the persons authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product

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stewardship logo in connection with the product, or the circumstances in which those persons are authorised, are not appropriate; or

(e) it is not in the public interest to accredit the arrangement.

Note: See also section 71 (a voluntary arrangement that does not meet certain conditions cannot be accredited).

Public interest and appropriate use of logo—relevant matters

(5) In determining whether the accrediting authority is satisfied as mentioned in paragraph (4)(d) or (e), the accrediting authority:

(a) must have regard to the objects of this Act; and

(b) may have regard to any other matter.

71 Only certain kinds of voluntary arrangements can be accredited

A voluntary arrangement cannot be accredited unless the following conditions are satisfied:

(a) the arrangement is designed to further the objects of this Act by achieving one or more measurable outcomes in relation to a product;

(b) there is a written document setting out:

(i) the persons that will be authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo in connection with the product; and

(ii) the circumstances in which those persons will be authorised by the arrangement to exercise those rights in connection with the product;

(c) the arrangement provides for there to be a person (the ***administrator***) who is responsible for ensuring the outcomes referred to in paragraph (a) are achieved;

(d) the administrator is a body corporate.

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72 Administrator of accredited voluntary arrangement must notify the Minister of certain events

(1) The administrator of an accredited voluntary arrangement must notify the Minister, in writing, as soon as practicable after any of the following events occurs:

(a) there is a change to who the administrator of the arrangement is;

(b) an event that may affect whether the administrator is a fit and proper person;

(c) an event that hinders the ability of the arrangement to achieve its outcomes;

(d) an event prescribed by the rules.

(2) A person contravenes this subsection if:

(a) the person is required by subsection (1) to notify the Minister of an event; and

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

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 60 penalty units.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 250 penalty units.

73 What is a *product stewardship logo*

(1) This section sets out what is a ***product stewardship logo***.

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Artistic works

(2) An artistic work is a ***product stewardship logo*** if:
  (a) copyright subsists in the artistic work; and
  (b) the Commonwealth is the owner of the copyright in the artistic work; and
  (c) the artistic work is reproduced on the Department's website for the purposes of this section.

Trade marks

(3) A trade mark is a ***product stewardship logo*** if:
  (a) the trade mark is registered under the *Trade Marks Act 1995*; and
  (b) the Commonwealth is the registered owner of the trade mark for the purposes of that Act; and
  (c) the trade mark is represented on the Department's website for the purposes of this section.

74 What are the Commonwealth's *intellectual property rights* in a product stewardship logo

The Commonwealth's ***intellectual property rights*** in a product stewardship logo are:
  (a) if the product stewardship logo is an artistic work—the Commonwealth's right under the *Copyright Act 1968* to do an act comprised in the copyright of the artistic work; and
  (b) if the product stewardship logo is a trade mark—the rights held by the Commonwealth as the registered owner of the trade mark under the *Trade Marks Act 1995*.

75 Commonwealth's intellectual property rights not limited

This Part does not limit:
  (a) the Commonwealth's intellectual property rights in a product stewardship logo; or

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(b) the operation of the *Copyright Act 1968* or the *Trade Marks Act 1995*.

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Part 4—Co-regulatory product stewardship

Division 1—Requirements for liable parties and administrators of co-regulatory arrangements

Subdivision A—Requirement for liable party to be member of approved co-regulatory arrangement

76 Liable party to be member of approved co-regulatory arrangement

(1) A liable party in relation to a product must be a member of an approved co-regulatory arrangement in relation to that product.

Strict liability offence

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

Penalty: 60 penalty units.

Civil penalty provision

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

Civil penalty: 250 penalty units.

Minister to give notice before applying for civil penalty order

(4) The Minister cannot apply for a civil penalty order in relation to a contravention of subsection (1) by a person unless:
   (a) the Minister has given the person a written notice requiring the person to become a member of an arrangement referred to in subsection (1) before the day specified in the notice; and
   (b) the person has failed to comply with the notice.

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(5) The day specified in the notice must be at least 14 days after the day the notice is given.

Variation and revocation of notice

(6) A person to whom a notice has been given under subsection (4) may apply to the Minister to:
  (a) vary the notice to specify a later day; or
  (b) revoke the notice.

(7) The application must be:
  (a) in writing; and
  (b) made before the day specified in the notice under subsection (4).

(8) The Minister may, by written notice given to the person:
  (a) if paragraph (6)(a) applies—vary the notice to specify a later day; or
  (b) if paragraph (6)(b) applies—revoke the notice.

Note: A decision under this subsection is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

(9) Otherwise, the Minister must refuse the application.

(10) Subsections (6) and (8) of this section do not affect the operation of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a notice under subsection (4) of this section.

Continuing contraventions

(11) Section 4K of the *Crimes Act 1914* and section 93 of the Regulatory Powers Act apply in relation to a contravention of subsection (1) of this section as if the liable party were required by that subsection to be a member of an approved co-regulatory arrangement before the day specified in the notice under subsection (4) of this section.

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Section 77

77 Who is a *liable party* in relation to a product

Rules may specify liable parties

(1) A ***liable party***, in relation to a product, is a person specified as a liable party in relation to that product in the rules.

(2) However, a person is a ***liable party*** in relation to a product only if the person:
  (a) is a constitutional corporation; and
  (b) has at any time:
    (i) manufactured the product in Australia; or
    (ii) imported the product into Australia; or
    (iii) distributed the product in Australia; or
    (iv) used the product in Australia.

Satisfying product stewardship criteria and furthering objects etc.

(3) Before the Minister makes rules for the purposes of subsection (1) in relation to a product, the Minister must be satisfied that:
  (a) making the rules in relation to the product will further the objects of this Act; and
  (b) the product stewardship criteria are satisfied in relation to the product; and
  (c) if rules made for the purposes of subsection (1) are not already in force in relation to the product:
    (i) the product has been notified by being included in a Minister's priority list at least 12 months beforehand; or
    (ii) there are special circumstances justifying the making of the rules without that notification.

(4) If the Minister makes rules to which subparagraph (3)(c)(ii) applies in relation to a product, the explanatory statement (within the meaning of the *Legislation Act 2003*) for the rules must include a statement setting out the special circumstances mentioned in that subparagraph.

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Exempting liable parties

(5) The rules may provide for the Minister to determine that this Act has effect as if a particular person who would otherwise have been a liable party in relation to a product were not such a liable party:
  (a) during a specified period; or
  (b) indefinitely.

(6) The determination has effect accordingly.

78 What is an *approved co-regulatory arrangement*

An ***approved co-regulatory arrangement*** is a co-regulatory arrangement that is approved by the Minister under section 85 in relation to a product.

Note 1: Obligations imposed by this Act in relation to co-regulatory arrangements and their administrators do not apply to an arrangement that is not approved.

Note 2: See section 85 for when the Minister must, or may, refuse to approve a co-regulatory arrangement in certain circumstances.

79 Outcomes for approved co-regulatory arrangements

(1) Rules made for the purposes of subsection 77(1) specifying liable parties in relation to a product must also specify one or more outcomes to be achieved by an approved co-regulatory arrangement that relates to that product.

(2) The rules may also do one or more of the following:
  (a) specify a method or formula by reference to which such an outcome may be determined, or for working out whether such an outcome has been achieved;
  (b) require different outcomes to be achieved by the end of different periods;
  (c) specify requirements for achieving those outcomes with which the administrator must comply.

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(3) Outcomes specified under subsection (1) must relate to the objects of this Act.

80 Matters to be dealt with by co-regulatory arrangements

(1) The rules may specify matters to be dealt with by a co-regulatory arrangement that relates to a specified product.

(2) Those matters must relate to one or more of the following:
- (a) the governance of the arrangement (including resolving disputes and replacing the administrator);
- (b) membership of the arrangement (including requirements for becoming or ceasing to be a member of the arrangement);
- (c) communicating information to the public about the arrangement;
- (d) any other matter relevant to the operation of the arrangement or the achievement of the outcomes specified under section 79 in relation to that product.

Note: Approval of a co-regulatory arrangement must be refused, and may be cancelled, if the Minister is not satisfied the arrangement adequately deals with these matters (see paragraphs 85(2)(c) and 87(1)(c)).

Subdivision B—Requirements for administrators of approved co-regulatory arrangements

81 Administrator to achieve outcomes for co-regulatory arrangement

(1) The administrator of an approved co-regulatory arrangement in relation to a product must:
- (a) take all reasonable steps to ensure that the arrangement achieves the outcomes specified under section 79 in relation to that product; and
- (b) comply with any requirements prescribed by rules made for the purposes of that section for achieving those outcomes.

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Note 1: The Minister may give an improvement notice, and require an audit of the arrangement to be carried out under section 109, if the administrator does not comply with this section.

Note 2: The Minister may cancel the arrangement's approval if the administrator does not comply with this section (see section 87).

Strict liability offence

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

Penalty: 60 penalty units.

Civil penalty provision

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

Civil penalty: 250 penalty units.

82 Administrator must notify the Minister of certain events

(1) The administrator of an approved co-regulatory arrangement must notify the Minister, in writing, as soon as practicable after any of the following events occur:

(a) an event that hinders the ability of the arrangement to achieve its outcomes;

(b) a liable party becomes, or ceases to be, a member of the arrangement;

(c) an event prescribed by the rules.

(2) A person contravenes this subsection if:

(a) the person is required by subsection (1) to notify the Minister of an event; and

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

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Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 60 penalty units.

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 250 penalty units.

Subdivision C—Requirements for liable parties and administrators

83 Requirement to give reports to the Minister

(1) The rules may make provision for and in relation to requiring a person who is a liable party in relation to a product, or the administrator of an approved co-regulatory arrangement in relation to a product, to give specified reports to the Minister.

Note: The rules may also provide for the making and retention of records (see section 142).

(2) Without limiting subsection (1), the rules may make provision for and in relation to any of the following:

(a) the matters to which a report must relate (which may be determined by the Minister);

(b) the manner in which a report must be given (which may be determined by the Minister);

(c) the timing of giving of reports (which may be determined by the Minister);

(d) the circumstances in which a report must be given (which may depend on a request by the Minister).

(3) A person contravenes this subsection if:

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(a) the person is subject to a requirement under rules made for the purposes of subsection (1); and

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

Strict liability offence

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

Penalty: 60 penalty units.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 250 penalty units.

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Division 2—Approving co-regulatory arrangements

84 Approving co-regulatory arrangements—application

(1) The administrator of a co-regulatory arrangement may apply for the Minister to approve the arrangement in relation to a product, specified under section 77, to which the arrangement relates.

(2) The application must be accompanied by a written description of the arrangement that sets out:
  (a) how the arrangement proposes to achieve the outcomes specified under section 79 in relation to the product; and
  (b) the matters dealt with by the arrangement; and
  (c) any other matter prescribed by the rules.

Note: See sections 172, 173 and 174 for additional matters relating to applications.

85 Approving co-regulatory arrangements—decision

Minister to approve or refuse to approve arrangement

(1) The Minister must, on application under section 84, either:
  (a) approve the co-regulatory arrangement in relation to the product to which the arrangement relates; or
  (b) refuse to approve the co-regulatory arrangement in relation to the product.

Note: A decision to refuse to approve an arrangement in relation to the product is a reviewable decision (see section 151) and the Minister must give the applicant written notice of the decision (see section 152).

When Minister must refuse to approve arrangement

(2) The Minister must refuse to approve a co-regulatory arrangement in relation to the product if the Minister is satisfied that:
  (a) a condition in subsection (3) is not satisfied in relation to the arrangement; or

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(b) the arrangement is unlikely to achieve one or more of the outcomes specified under section 79 for the product; or

(c) the arrangement does not adequately deal with any matters specified for the product in rules made for the purposes of section 80; or

(d) the administrator is not a fit and proper person; or

(e) it is not in the public interest to approve the arrangement.

Note: The Minister must have regard to the matters in section 175 in considering whether the administrator is a fit and proper person for the purposes of paragraph (d).

(3) The conditions are as follows:

(a) the arrangement is designed to achieve the outcomes specified under section 79 in relation to a product;

(b) the arrangement deals with the matters prescribed by rules (if any) made for the purposes of section 80 in relation to that product;

(c) the arrangement provides for there to be one or more members of the arrangement;

(d) only a liable party may, under the arrangement, be a member of the arrangement;

(e) the arrangement provides for there to be a person (the ***administrator***) who:

(i) is responsible for ensuring the outcomes referred to in paragraph (a) are achieved; and

(ii) may also be a member of the arrangement;

(f) the administrator is a body corporate.

Public interest

(4) For the purposes of paragraph (2)(e), in determining whether it is in the public interest to approve the co-regulatory arrangement, the Minister:

(a) must have regard to the objects of this Act; and

(b) may have regard to any other matter.

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When Minister may refuse to approve arrangement

(5) The Minister may refuse to approve a co-regulatory arrangement in relation to the product if:

(a) the applicant has not given the Minister further information or documents within the period specified in a request made under section 174 in relation to the application; or

(b) the information or a document provided in the application, or as requested under section 174, is false or misleading.

Notice of decision

(6) The Minister must give the applicant written notice of the decision on the application.

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Division 3—Reviewing co-regulatory arrangements and cancelling approvals

86 Reviewing approved co-regulatory arrangements

(1) The Minister must review the operation of an approved co-regulatory arrangement before the end of:
  (a) 5 years starting on the day the arrangement is approved; and
  (b) each successive 5-year period.

(2) Subsection (1) does not limit:
  (a) the Minister's ability to review the operation of an approved co-regulatory arrangement at any other time; or
  (b) the Minister's power under section 87 to cancel the approval of a co-regulatory arrangement.

87 Cancelling approvals of co-regulatory arrangements

General grounds for cancelling arrangement's approval

(1) The Minister may cancel the approval of a co-regulatory arrangement in relation to a product if the Minister is satisfied that:
  (a) a condition in subsection 85(3) is not satisfied in relation to the arrangement; or
  (b) the arrangement has not achieved, or is unlikely to achieve, one or more of the outcomes specified under section 79 for the product; or
  (c) the arrangement does not adequately deal with any matters specified for the product in rules made for the purposes of section 80; or
  (d) the arrangement's administrator is not a fit and proper person; or
  (e) the arrangement's administrator has not complied with one or more of the following in relation to the arrangement:

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(i) section 81 (which requires the administrator to take reasonable steps to achieve the outcomes referred to in paragraph (b) in accordance with the rules);

(ii) an improvement notice given under section 88;

(iii) section 115 (which requires the administrator to provide an auditor with facilities and assistance in relation to conducting an audit);

(iv) rules made for the purposes of section 142 (making and retaining records); or

(f) subsection 91(1) (replacing administrator) has not been complied with in relation to the arrangement; or

(g) there has been a material change in circumstances since the arrangement was approved; or

(h) any of the following information or documents were false or misleading:

(i) information or documents given in connection with the application for approval;

(ii) information or documents given in connection with an application under subsection 91(1) (replacing administrator);

(iii) information or documents given at any other time in relation to this Act; or

(i) a ground for cancelling the approval prescribed by the rules exists.

Note 1: The Minister must have regard to the matters in section 175 in considering whether the administrator is a fit and proper person for the purposes of paragraph (d).

Note 2: A decision to cancel the approval of a co-regulatory arrangement in relation to a product is a reviewable decision (see section 151) and the Minister must give the administrator of the arrangement written notice of the decision (see section 152).

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Cancelling arrangement's approval on application by administrator

(2) The Minister may cancel the approval of a co-regulatory arrangement if the administrator of the arrangement applies for the Minister to do so.

Note 1: See sections 172, 173 and 174 for additional matters relating to applications.

Note 2: A decision to refuse to cancel the approval of a co-regulatory arrangement in relation to a product is a reviewable decision (see section 151) and the Minister must give the administrator of the arrangement written notice of the decision (see section 152).

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Division 4—Improvement notices

88 Improvement notices

(1) The Minister may give an administrator of an approved co-regulatory arrangement a notice (an ***improvement notice***) under this section if the Minister:

(a) believes on reasonable grounds that the administrator has not complied, or is unlikely to comply, with section 81 (administrator to achieve outcomes); and

(b) is satisfied that it is in the public interest to do so.

(2) The notice must:

(a) specify the grounds on which the Minister believes that the administrator has not complied, or is unlikely to comply, with section 81; and

(b) specify a reasonable period within which the administrator must take the action necessary to comply with section 81.

(3) The notice may specify action that the administrator must take during the period.

(4) Before the end of the period, the Minister may extend the period in writing.

Varying or revoking a notice

(5) If the Minister is satisfied that it is in the public interest to vary or revoke an improvement notice (the ***original notice***), the Minister may do so by giving a written notice (the ***new notice***) to the administrator.

(6) If the original notice is varied, the new notice must set out the text of the original notice and the variations to it.

(7) An administrator must comply with an improvement notice given to the administrator under this section.

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Strict liability offence

(8) A person commits an offence of strict liability if the person contravenes subsection (7).

Penalty: 60 penalty units.

Civil penalty provision

(9) A person is liable to a civil penalty if the person contravenes subsection (7).

Civil penalty: 250 penalty units.

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Division 5—Other matters relating to co-regulatory product stewardship

89 Co-regulatory product stewardship—anti-avoidance

Minister may determine Act has effect as if person were a liable party

(1) The Minister may, by writing, determine that this Act has effect, and is taken always to have had effect, as if a specified person (the ***prospective liable party***) were a liable party in relation to a product in relation to which rules have been made for the purposes of subsection 77(1).

Note: A determination under this subsection is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

Conditions for making determination—avoidance scheme etc.

(2) However, the Minister may make the determination only if:

(a) one or more persons (whether or not the prospective liable party) engaged in any or all of the following conduct:

(i) entering into a scheme;

(ii) beginning to carry out a scheme;

(iii) carrying out a scheme; and

(b) the Minister believes, on reasonable grounds, that any person who engaged in that conduct did so for the purpose (or for purposes that included the substantial purpose) of enabling the prospective liable party to avoid being a liable party in relation to a product; and

(c) the prospective liable party is a constitutional corporation.

Determination has effect

(3) The determination has effect accordingly.

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Period during which determination has effect

(4) The determination:

(a) takes effect on the day specified in the determination, which must not be before the day the rules specifying the liable parties in relation to the product came into force; and

(b) remains in effect:

(i) if a day is specified in the determination—until that day; or

(ii) otherwise—indefinitely.

Determination not a legislative instrument

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

*Meaning of **scheme***

(6) In this Act:

scheme means:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

90 Additional or corrected information in relation to approved co-regulatory arrangements

(1) The administrator of an approved co-regulatory arrangement must comply with subsection (2) if:

(a) the administrator becomes aware that information included in an application made under section 84, or information or a document given to the Minister in relation to such an application, was incomplete or incorrect; or

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(b) a change prescribed by the rules occurs.

(2) The administrator of the approved co-regulatory arrangement must, as soon as practicable, give the Minister additional or corrected information, to the extent that it is relevant to assessing whether the requirements of this Act in relation to a matter covered by the approval have been, are being or will be complied with.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 145, 146 and 147 of this Act and sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

Civil penalty provision

(3) A person is liable to a civil penalty if:
(a) the person is required to give information to the Minister by subsection (2); and
(b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

91 Co-regulatory product stewardship—replacing administrator

(1) A person cannot be appointed to replace an administrator of an approved co-regulatory arrangement unless the Minister, on application by the person, approves the appointment.

Note 1: See sections 172, 173 and 174 for additional matters relating to applications.

Note 2: The Minister may cancel the arrangement's approval if this subsection is not complied with (see section 87).

(2) The Minister must decide to:
(a) approve the appointment; or
(b) refuse to approve the appointment.

Note: A decision to refuse to approve the appointment is a reviewable decision (see section 151) and the Minister must give the person written notice of the decision (see section 152).

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(3) In deciding whether to approve the appointment, the Minister must have regard to the following matters:

(a) whether the Minister would have approved the arrangement if the person had been the administrator at the time the application for approval of the co-regulatory arrangement was made;

(b) if a request has been made under subsection 174(1) in relation to the application—whether the person has given the Minister further information or documents within the period specified in the request in relation to the application;

(c) whether information or a document provided in the application under subsection (1) of this section, or as requested under section 174, is false or misleading;

(d) any other matters prescribed by the rules.

Note: For approval requirements relating to administrators, see:

(a) paragraph 85(2)(d) (administrator to be a fit and proper person); and

(b) paragraph 85(3)(f) (administrator to be a body corporate).

(4) In deciding whether to approve the appointment, the Minister may have regard to any other matter that the Minister considers relevant.

(5) The Minister must give the person written notice of the Minister's decision on an application under subsection (1).

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Part 5—Mandatory product stewardship

92 Mandatory product stewardship requirements may be prescribed by rules

Basic rule—requiring person to take, or not take, specified action

(1) The rules may require one or more specified persons to take, or not to take, specified action in relation to a specified product.

(2) The action must relate to the objects of this Act.

Note: For limitations on the power to make rules for the purposes of this Part, see sections 93 (satisfying product stewardship criteria and furthering objects of this Act) and 94 (constitutional connection).

Specific action covered by subsection (1)

(3) Without limiting subsection (1), rules made for the purposes of that subsection in relation to a product may do any or all of the following:

(a) prohibit (either absolutely or subject to conditions), limit, restrict or otherwise affect the manufacture, import, export, distribution or use of the product;

(b) prohibit (either absolutely or subject to conditions), limit or restrict substances from being contained in the product;

(c) require the product to be labelled or marked in accordance with the rules;

(d) specify requirements in relation to packaging the product;

(e) specify requirements in relation to the durability, reparability and reusability of the product;

(f) specify requirements in relation to communicating information, in accordance with the rules, in connection with distributing, reusing, recycling, recovering, treating or disposing of the product;

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(g) require a person to make a product return payment in relation to the product;
(h) specify requirements in relation to product design for the product;
(i) specify other requirements in relation to reusing, recycling, recovering, treating or disposing of the product;
(j) provide for the Minister to exempt a specified person from a requirement prescribed by rules made for the purposes of subsection (1).

(4) The paragraphs of subsection (3) do not limit each other.

(5) A person contravenes this subsection if:
(a) the person is subject to a requirement under rules made for the purposes of subsection (1); and
(b) the person fails to comply with the requirement.

Fault-based offence

(6) A person commits an offence if the person contravenes subsection (5).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

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

Civil penalty: 240 penalty units.

*Meaning of **product return payment***

(8) A ***product return payment*** is a payment, of an amount prescribed by the rules in relation to a product, that a person is required to make to another person if the other person returns that kind of product for reuse, remanufacture, recycling, recovery, treatment or disposal.

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Note: The Minister must be satisfied of certain matters before rules are made requiring a person to pay a product return payment in relation to a product (see paragraph 93(1)(c)).

Product return payment not taxation

(9) Rules made for the purposes of subsection (1) that require a person to make a product return payment must not amount to taxation.

93 Mandatory product stewardship—satisfying product stewardship criteria and furthering objects etc.

(1) Before the Minister makes rules for the purposes of section 92 in relation to a product, the Minister must be satisfied that:

(a) making the rules in relation to the product will further the objects of this Act; and

(b) the product stewardship criteria are satisfied in relation to the product; and

(c) if the rules would require a person to make a product return payment in relation to the product:

(i) making the rules will encourage reusing, recycling, recovering, treating or disposing of that kind of product, or waste from such products, in a safe, scientific and environmentally sound way; and

(ii) the persons required to make product return payments in relation to the product are likely to be appropriately compensated; and

(d) if rules made for the purposes of section 92 are not already in force in relation to the product:

(i) the product has been notified in a Minister's priority list at least 12 months beforehand; or

(ii) there are special circumstances justifying the making of the rules without that notification.

Example: For the purposes of subparagraph (c)(ii), the persons would be appropriately compensated if they:

(a) are able to pass the costs of the payments on to consumers; or

(b) will be reimbursed for the payments by other participants in the supply chain for the product.

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(2) If the Minister makes rules to which subparagraph (1)(d)(ii) applies in relation to a product, the explanatory statement (within the meaning of the *Legislation Act 2003*) for the rules must include a statement setting out the special circumstances mentioned in that subparagraph.

94 Mandatory product stewardship—constitutional connection

(1) Rules made for the purposes of this Part must:

(a) be expressed to apply in relation to acts and omissions of constitutional corporations; or

(b) be expressed to apply in relation to acts and omissions in the course of constitutional trade or commerce; or

(c) be appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.

(2) Rules made for the purposes of this Part must:

(a) specify whether they are made in accordance with paragraph (1)(a), (b) or (c); and

(b) if they are made in accordance with paragraph (1)(c)—identify the agreement referred to in that paragraph.

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Part 6—Other matters

95 Publishing information about arrangements

(1) The Minister must publish on the Department's website, for each accredited voluntary arrangement and each approved co-regulatory arrangement:

(a) a summary of the arrangement; and

(b) the name of the arrangement's administrator; and

(c) the contact details for the arrangement's administrator that are prescribed by the rules; and

(d) a copy of any report on the operation of the arrangement given to the Minister:

(i) for an accredited voluntary arrangement—in accordance with a condition of the arrangement's accreditation (see paragraph 70(3)(f)); or

(ii) for an approved co-regulatory arrangement—in accordance with rules made for the purposes of section 83 (requirement to give reports to the Minister); and

(e) for an accredited voluntary arrangement—the persons authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo;

(f) for an approved co-regulatory arrangement—a copy of any audit report in relation to the arrangement given to the Minister in accordance with rules made for the purposes of section 112.

(2) However, the Minister must not publish any information under subsection (1) if the Minister is satisfied that:

(a) there is a risk that publishing the information might substantially prejudice the commercial interests of a person; and

(b) publishing the information is not in the public interest.

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Chapter 4—Administration

Part 1—Introduction

96 Simplified outline of this Chapter

Authorised officers have powers to ensure people are complying with this Act, to investigate non-compliance and to enforce this Act. Enforcement mechanisms include infringement notices, enforceable undertakings and injunctions.

Auditors can conduct audits in relation to product stewardship arrangements, export operations and the performance of functions and the exercise of powers under this Act.

The rules may require persons who have obligations under this Act to make and retain specified kinds of records.

The Minister has various powers to gather information relating to regulated waste material, product stewardship, the objects of this Act and other matters.

Information obtained by or disclosed to persons under or for the purposes of this Act (called protected information) must not be used or disclosed if the use or disclosure might substantially prejudice the commercial interests of a person. There are some exceptions.

Certain decisions under this Act may be reviewed by the Minister and by the Administrative Appeals Tribunal.

Fees may be charged relating to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

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Section 96

The rules may also make provision in relation to the payment of waste material export charge (which is a tax imposed under related legislation).

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Part 2—Compliance and enforcement

Division 1—Powers of investigation and enforcement

97 General monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) a provision of this Act; or

(b) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that the provision relates to this Act.

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

Information subject to monitoring

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

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

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2):

(a) there are no related provisions; and

(b) an authorised government enforcement officer is an authorised applicant; and

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(c) an authorised government enforcement officer is an authorised person; and
(d) a magistrate is an issuing officer; and
(e) the Secretary is the relevant chief executive; and
(f) each relevant court (as defined in section 10 of this Act) is a relevant court.

Person assisting

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

Extension to external Territories

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

98 Additional monitoring powers etc.

Additional monitoring powers

(1) For the purposes of Part 2 of the Regulatory Powers Act, the additional powers mentioned in subsection (2) are also taken to be monitoring powers for the purposes of determining:
(a) whether a provision of this Act, or an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that the provision relates to this Act, has been, or is being, complied with; or
(b) the correctness of information given in compliance or purported compliance with a provision of this Act.

(2) The additional monitoring powers are:
(a) the powers to take, test and analyse samples of any thing on premises entered under Part 2 of the Regulatory Powers Act; and

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(b) the power to secure premises entered under Part 2 of the Regulatory Powers Act; and

(c) the power to secure things on premises entered under Part 2 of the Regulatory Powers Act for the purpose of testing or analysing those things.

Identity cards

(3) Part 2 of the Regulatory Powers Act applies in relation to the provisions of this Act as if a reference in that Part to an identity card were a reference to an identity card issued under section 123 of this Act.

(4) The following provisions of the Regulatory Powers Act do not apply in relation to the provisions of this Act:

(a) the definition of ***identity card*** in section 4;

(b) section 13;

(c) Division 8 of Part 2.

Use of reasonable force

(5) In executing a monitoring warrant:

(a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

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

99 General investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) an offence provision of this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that the provision relates to this Act.

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

Related provisions, authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) there are no related provisions; and

(b) an authorised government enforcement officer is an authorised applicant; and

(c) an authorised government enforcement officer is an authorised person; and

(d) a magistrate is an issuing officer; and

(e) the Secretary is the relevant chief executive; and

(f) each relevant court (as defined in section 10 of this Act) is a relevant court.

Person assisting

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

Extension to external Territories

(4) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

100 Additional investigation powers etc.

Additional investigation powers

(1) For the purposes of Part 3 of the Regulatory Powers Act, the additional powers mentioned in subsection (2) are also taken to be

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investigation powers in relation to evidential material that relates to a provision referred to in subsection 99(1).

(2) The additional investigation powers are:

(a) the powers to take, test and analyse samples of any thing on premises entered under Part 3 of the Regulatory Powers Act; and

(b) if the authorised person has the power to seize a thing (the ***seizable thing***) under that Part—the power to seize a container that contains the seizable thing, and any other thing contained in the container, if the authorised person reasonably believes that it is not reasonably practicable to seize the seizable thing without also seizing the container.

Identity cards

(3) Part 3 of the Regulatory Powers Act applies in relation to a provision referred to in subsection 99(1) of this Act as if a reference in that Part to an identity card were a reference to an identity card issued under section 123 of this Act.

(4) The following provisions of the Regulatory Powers Act do not apply in relation to a provision referred to in subsection 99(1) of this Act:

(a) the definition of ***identity card*** in section 4;

(b) section 43;

(c) Division 9 of Part 3.

Use of necessary and reasonable force

(5) In executing an investigation warrant:

(a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

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

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101 Civil penalty provisions

Enforceable civil penalty provisions

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

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

Authorised applicant

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

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each relevant court (as defined in section 10 of this Act) is a relevant court in relation to the civil penalty provisions of this Act.

Extension to external Territories

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

102 Infringement notices

Provisions subject to an infringement notice

(1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
  (a) subsection 60(3);
  (b) subsection 61(3);
  (c) subsection 61(4);
  (d) subsection 72(3);
  (e) subsection 72(4);

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(f) subsection 76(2);
(g) subsection 76(3);
(h) subsection 81(2);
(i) subsection 81(3);
(j) subsection 82(3);
(k) subsection 82(4);
(l) subsection 83(4);
(m) subsection 83(5);
(n) subsection 88(8);
(o) subsection 88(9);
(p) subsection 90(3);
(q) subsection 92(7);
(r) subsection 105(4);
(s) subsection 106(8);
(t) subsection 120(6);
(u) subsection 121(3);
(v) subsection 124(3);
(w) subsection 142(4);
(x) subsection 142(5);
(y) subsection 144(8);
(z) subsection 144(9);
(za) subsection 173(3).

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

Infringement officer

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

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Relevant chief executive

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

Extension to external Territories

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

103 Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

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

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each relevant court (as defined in section 10 of this Act) is a relevant court in relation to the provisions mentioned in subsection (1).

Extension to external Territories

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

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104 Injunctions

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

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

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each relevant court (as defined in section 10 of this Act) is a relevant court in relation to the provisions mentioned in subsection (1).

Extension to external Territories

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

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Division 2—Power to give directions

105 Direction to assist persons performing functions etc. under this Act

(1) If:

(a) an authorised officer is performing functions or exercising powers under this Act; and

(b) the authorised officer reasonably believes that a person (the ***relevant person***) is able to provide reasonable assistance or facilities to the authorised officer, or to any other person who is performing functions or exercising powers under this Act;

the authorised officer may direct the relevant person to provide that assistance or those facilities.

Note: See also section 107 (general provisions relating to directions).

(2) A person contravenes this subsection if:

(a) the person is given a direction under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the direction.

Fault-based offence

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

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

Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 60 penalty units.

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106 Direction to deal with non-compliance with the requirements of this Act etc.

Grounds for giving direction

(1) An authorised officer may give a direction to a person (a ***relevant person***) referred to in column 1 of an item in the following table if an authorised officer reasonably believes that a ground referred to in column 2 of that item exists.

Directions to deal with non-compliance with the requirements of this Act etc.

Item	Column 1 Relevant person	Column 2 Grounds for giving direction
1	The holder of an export licence	Any of the following: (a) a condition of the export licence has been contravened, or it is likely that such a condition will be contravened; (b) the holder has not complied, or is likely not to comply, with a requirement of this Act; (c) particular regulated waste material, or a kind of regulated waste material, covered by the licence does not comply, or is not likely to comply, with a requirement of this Act that applies in relation to the waste material
2	A person authorised by an accredited voluntary arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo in connection with a product	The person has not complied, or is not likely to comply, with a requirement of this Act
3	An administrator of an accredited voluntary arrangement	The administrator has not complied, or is not likely to comply, with a requirement of this Act

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Directions to deal with non-compliance with the requirements of this Act etc.		
Item	**Column 1** **Relevant person**	**Column 2** **Grounds for giving direction**
4	The accrediting authority (other than the Minister) of an accredited voluntary arrangement	The accrediting authority has not complied, or is not likely to comply, with a requirement of this Act
5	An administrator of a co-regulatory arrangement	The administrator has not complied, or is not likely to comply, with a requirement of this Act
6	A liable party in relation to a product	The liable party has not complied, or is not likely to comply, with a requirement of this Act
7	A person specified by rules made for the purposes of subsection 92(1) (about mandatory product stewardship)	The person has not complied, or is not likely to comply, with a requirement specified by the rules
8	A person of a kind prescribed by the rules (who may be a relevant person referred to in another item of this table)	A ground prescribed by the rules

Content of direction

(2) The direction must require the relevant person to take specified action within a specified period, to deal with the ground for giving the direction.

Note 1: An authorised officer may give more than one direction relating to a ground (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Note 2: See also section 107 (general provisions relating to directions).

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(3) Without limiting subsection (2), a relevant person may be directed to cease carrying out export operations in relation to particular regulated waste material or a kind of regulated waste material.

(4) However, a direction must not require the relevant person to cease carrying out export operations in relation to particular regulated waste material, or a kind of regulated waste material, unless an authorised officer reasonably believes that:

(a) one or more of the following grounds exists:

(i) the waste material does not comply, or it is likely that the waste material does not comply, with a requirement of this Act that applies in relation to the waste material;

(ii) a ground prescribed by the rules; and

(b) that ground, or those grounds, cannot be dealt with other than by ceasing the relevant export operations.

(5) A direction that is given in writing must state that, if the person fails to comply with the direction, the person may commit an offence or be liable to a civil penalty.

(6) A person contravenes this subsection if:

(a) the person is given a direction under subsection (1); and

(b) the person engages in conduct; and

(c) the conduct contravenes the direction.

Fault-based offence

(7) A person commits an offence if the person contravenes subsection (6).

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

Civil penalty provision

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

Civil penalty: 60 penalty units.

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(9) Subsection (6) does not apply if:

(a) the direction was given in writing and the direction did not include the statement referred to in subsection (5); or

(b) the direction was given orally and the authorised officer did not take reasonable steps to inform the person that the person may commit an offence or be liable to a civil penalty for failing to comply with the direction.

Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection (see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act).

107 General provisions relating to directions

(1) Unless otherwise provided by this Act, a person who is permitted to give a direction under this Act may give the direction orally or in writing.

Written copy of oral direction must be given

(2) If a person gives a direction under this Act orally, the person must, as soon as practicable after giving the direction, also give the direction in writing.

Directions are not legislative instruments

(3) Unless otherwise provided by this Act, a direction that is given under this Act in writing is not a legislative instrument.

Inconsistent directions

(4) Subject to subsection (5), a later direction overrides an earlier direction to the extent of any inconsistency.

(5) If:

(a) a direction (***direction A***) is given by a State or Territory authorised officer or a third party authorised officer; and

(b) the direction is inconsistent with a direction (***direction B***) given by a Commonwealth authorised officer;

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then direction B prevails and direction A, to the extent of the inconsistency, does not have any effect.

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Division 3—Audits

Subdivision A—Minister may require audits to be conducted

108 Audit of export operations

Export operations in relation to which audit may be required

(1) The Minister may require an audit to be conducted of any of the following:

(a) regulated waste material covered by an export licence or an exemption;

(b) export operations covered by an export licence or an exemption;

(c) export operations proposed to be carried out in relation to a kind of regulated waste material by a person who has applied for an export licence or an exemption in relation to the operations;

(d) export operations carried out in relation to a kind of regulated waste material by a person to whom an export licence for the operations has been granted, but which has been suspended;

(e) export operations carried out in relation to a kind of regulated waste material by a person to whom an export licence or exemption for the operations has been granted, but which has been revoked;

(f) export operations of a kind prescribed by the rules.

Matters to which audit must relate

(2) The audit must relate to one or more of the following matters:

(a) if the audit is in relation to an export licence:

(i) whether a kind of export operations or a kind of regulated waste material complies, has complied or will comply with a requirement of this Act that relates to the export operations or the waste material; or

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(ii) whether conditions of the export licence are being, have been or are likely to be complied with;

(b) if the audit is in relation to an exemption:

(i) whether a kind of export operations or a kind of regulated waste material complies, has complied or will comply with a requirement of this Act that relates to the export operations or the waste material;

(ii) whether conditions of the exemption are being, have been or are likely to be complied with;

(c) in any case—any other matter prescribed by the rules.

(3) The audit may include an audit of financial statements conducted in accordance with any standard issued by the Auditing and Assurance Standards Board that applies to the audit, as in force from time to time.

(4) The audit may deal with anything that is:

(a) reasonably necessary for the effective conduct of the audit; or

(b) incidental to the matter to which the audit relates.

(5) Without liming subsection (1), the audit may include inspections of regulated waste material.

Who may conduct audit

(6) The audit may be conducted by:

(a) an authorised officer; or

(b) an approved auditor.

109 Audit of product stewardship arrangements

(1) The Minister may require an audit to be conducted in relation to:

(a) an accredited voluntary arrangement; or

(b) an approved co-regulatory arrangement; or

(c) a member of an approved co-regulatory arrangement; or

(d) an accrediting authority other than the Minister; or

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(e) persons required by rules made for the purposes of subsection 92(1) to take, or not to take, specified action in relation to a specified product.

(2) The audit must relate to one or more of the following matters:

(a) for an audit mentioned in paragraph (1)(a)—whether the administrator of the arrangement is ensuring, or is likely to ensure, the outcomes referred to in paragraph 71(a) are achieved;

(b) for an audit mentioned in paragraph (1)(b)—whether the administrator of the arrangement is complying with, or is likely to comply with, section 81;

(c) for an audit mentioned in paragraph (1)(c)—activities of the member in relation to the arrangement;

(d) for an audit mentioned in paragraph (1)(d)—whether the accrediting authority is complying with, or is likely to comply with, rules made for the purposes of section 70;

(e) for an audit mentioned in paragraph (1)(e)—whether the person is taking, or is likely to take, the specified action in relation to the product;

(f) any other matter prescribed by the rules.

(3) The audit may include an audit of financial statements conducted in accordance with any standard issued by the Auditing and Assurance Standards Board that applies to the audit, as in force from time to time.

(4) The audit may deal with anything that is:

(a) reasonably necessary for the effective conduct of the audit; or

(b) incidental to the matter to which the audit relates.

(5) Without liming subsection (1), an audit may include inspections of products covered by the arrangement or the rules (as the case may be).

Who may conduct audit

(6) The audit may be conducted by:

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(a) an authorised officer; or
(b) an approved auditor.

110 Audit in relation to persons performing functions or exercising powers under this Act

The Minister may require an audit to be conducted by an auditor in relation to:

(a) the performance of functions and the exercise of powers under this Act by a person who is, or was:
  (i) an approved auditor; or
  (ii) any other person (other than a Commonwealth authorised officer or a State or Territory authorised officer) who performs or performed functions, or exercises or exercised powers, under this Act; or
(b) compliance by a person referred to subparagraph (a)(i) or (ii) with the conditions applying to the performance of functions or the exercise of powers by the person under this Act.

111 Single audit or program of audits may be required

The Minister may require, under this Division, a single audit, or a program of audits, to be conducted in relation to a specified matter.

Note: If the Minister has required a program of audits to be conducted in relation to a matter, the Minister may also require additional audits to be conducted in relation to the matter (see subsection 33(1) of the *Acts Interpretation Act 1901*).

112 Matters relating to audits

(1) The Minister need not give notice of an audit required under this Division.

(2) The rules may make provision for and in relation to audits.

(3) Without limiting subsection (2), the rules may make provision for and in relation to the following:

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(a) requirements relating to giving a description of the scope of an audit to the relevant person before the audit starts;
(b) requirements relating to showing identity cards;
(c) processes to be followed after an audit has been completed;
(d) information that must be provided to the relevant person for the audit during the audit or after the audit is completed;
(e) requirements for, and in relation to, reports to be provided in relation to an audit;
(f) actions the Minister may require the relevant person for the audit to take after the audit has been completed.

113 Powers of auditors

(1) For the purpose of conducting an audit under this Division, an auditor may do anything the auditor considers necessary, including the following:
(a) request a person who the auditor reasonably believes has information or documents that are relevant to the audit to answer questions, provide information in writing, or produce the documents;
(b) take samples of products or waste material, or from equipment or other things used in export operations, to which the audit relates;
(c) if the auditor is an authorised officer—take, test or analyse samples of products or waste material, or from equipment or other things used in export operations, to which the audit relates;
(d) arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of products or waste material, or from equipment or other things used in export operations, to which the audit relates;
(e) any other thing prescribed by the rules.

Note 1: An auditor who is an authorised officer may also give a direction under section 106.

Note 2: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see

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sections 146 and 147 of this Act and sections 137.1 and 137.2 of the *Criminal Code*).

(2) An auditor:

(a) may make copies of, or take extracts from, a document or record produced under paragraph (1)(a); and

(b) for that purpose, may remove the document or record from the place where it was produced.

114 Relevant person for an audit

The ***relevant person*** for an audit under this Division is as follows:

(a) for an audit of an accredited voluntary arrangement—the administrator of the arrangement;

(b) for an audit of an approved co-regulatory arrangement—the administrator of the arrangement;

(c) for an audit of a member of an approved co-regulatory arrangement—the member;

(d) for an audit in relation to an accrediting authority—the accrediting authority;

(e) for an audit in relation to a person required by rules made for the purposes of subsection 92(1) to take, or not to take, specified action—the person;

(f) for an audit of export operations covered by an export licence—the holder, or former holder, of the export licence;

(g) for an audit of export operations covered by an exemption—the holder, or former holder, of the exemption;

(h) for an audit of export operations proposed to be carried out in relation to a kind of regulated waste material by a person who has applied for an export licence or an exemption in relation to the operation—the applicant;

(i) for an audit of export operations of a kind prescribed by the rules for the purposes of paragraph 108(1)(f)—the person prescribed by the rules;

(j) for an audit under section 110—the person to whom the audit relates.

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115 Relevant person for an audit must provide facilities and assistance

The relevant person for an audit must provide the auditor with the facilities and assistance that are reasonably necessary for the conduct of the audit.

Subdivision B—Approved auditors

116 Minister may approve persons to conduct audits

(1) The Minister may, in writing, approve a person to conduct audits under this Division.

(2) An instrument of approval under subsection (1) is not a legislative instrument.

(3) The Minister must not approve a person to conduct audits under this Division unless:
  (a) the Minister is satisfied that the person has the knowledge, training or experience necessary to properly exercise the powers of an auditor; or
  (b) the person is a registered company auditor (within the meaning of the *Corporations Act 2001*); or
  (c) the person is an authorised audit company (within the meaning of the *Corporations Act 2001*).

(4) The rules may make provision for and in relation to matters relating to the approval of persons under subsection (1).

(5) Without limiting subsection (4), the rules may make provision for and in relation to the following:
  (a) applications for approval;
  (b) dealing with such applications;
  (c) additional requirements that must be met for approval;
  (d) matters to which the Minister may or must have regard in considering an application for approval;
  (e) conditions of an approval;

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(f) the period of effect of an approval;

(g) assessment of the competency of applicants;

(h) suspension and revocation of an approval.

117 Approved auditors may charge fees

(1) An approved auditor may charge a fee in relation to things done in the performance of the approved auditor's functions or the exercise of the approved auditor's powers under this Act.

(2) A fee must not be such as to amount to taxation.

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Division 4—Miscellaneous

118 Physical elements of offences

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

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

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

119 Contravening an offence provision or a civil penalty provision

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

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

120 Notification of conviction of offence, order to pay pecuniary penalty etc.—participants in product stewardship arrangements, export licence holders and applicants for licences

(1) This section applies to a person who is:

(a) an accrediting authority other than the Minister; or

(b) an administrator of an accredited voluntary arrangement; or

(c) an administrator of an approved co-regulatory arrangement; or

(d) an applicant for an export licence; or

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(e) the holder of an export licence; or
(f) prescribed by the rules.

(2) If, under a law of a State or Territory, the person is given a notice (however described) that:
(a) relates to an environmental matter; and
(b) requires the person to take, or not to take, specified action to remedy non-compliance, or suspected non-compliance, with the law;

the person must notify the Minister, in writing, of that fact as soon as practicable after the notice is given to the person.

(3) If the person is convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud, dishonesty or an environmental matter, the person must notify the Minister, in writing, of the conviction or order as soon as practicable after the person is convicted or the order is made.

(4) If the person becomes aware that an associate of the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud, dishonesty or an environmental matter, the person must notify the Minister, in writing, of the conviction or order as soon as practicable after the person becomes aware of the conviction or order.

(5) The rules may require the person to give to the Minister, as soon as practicable or within a specified period, notification of any other specified matters.

Civil penalty provision

(6) A person is liable to a civil penalty if:
(a) the person is required to notify the Minister of a matter:
(i) under subsection (2), (3) or (4); or
(ii) under rules made for the purposes of subsection (5); and
(b) the person fails to comply with the requirement.

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Civil penalty: 60 penalty units.

(7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

121 Notification of conviction of offence or order to pay pecuniary penalty—third party authorised officers etc.

(1) This section applies to a person who is:
(a) a third party authorised officer; or
(b) a person prescribed by the rules.

(2) If the person is convicted of an offence against, or ordered to pay a pecuniary penalty under, any Australian law for a contravention involving fraud or dishonesty, the person must notify the Minister, in writing, of the conviction or order as soon as practicable after the person is convicted or the order is made.

Civil penalty provision

(3) A person is liable to a civil penalty if:
(a) the person is required to notify the Minister of a matter under subsection (2); and
(b) the person fails to comply with the requirement.

Civil penalty: 60 penalty units.

(4) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

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122 Minister may publicise certain offences, contraventions and decisions

(1) The Minister may publicise, in any way the Minister thinks appropriate, any or all of the following:

(a) an offence against this Act of which a person has been convicted, and the person's name;

(b) a contravention of a civil penalty provision of this Act in relation to which a civil penalty order has been made against a person, and the person's name;

(c) the acceptance of an undertaking given under section 114 of the Regulatory Powers Act (as it applies because of this Part) by a person, the terms of the undertaking, and the person's name;

(d) a breach of an undertaking given under section 114 of the Regulatory Powers Act (as it applies because of this Part) in relation to which an order has been made against a person under subsection 115(2) of that Act (as it applies because of this Part), the terms of the order and the person's name;

(e) the granting or varying of an injunction under Part 7 of the Regulatory Powers Act (as it applies because of this Part) restraining a person from engaging in conduct, or requiring a person to do an act or thing, the nature of the conduct, act or thing and the person's name;

(f) a decision to:

(i) give the administrator of an approved co-regulatory arrangement an improvement notice; or

(ii) require an audit of an approved co-regulatory arrangement to be conducted; or

(iii) cancel the accreditation of a voluntary arrangement or the approval of a co-regulatory arrangement;

(g) the reasons for a decision referred to in paragraph (f);

(h) the name of the administrator of an arrangement referred to in paragraph (f).

Note: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph 6.2(b) of Australian Privacy Principle 6.

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(2) This section does not:
  (a) limit the power of the Minister or anyone else to publicise a matter or a person's name; or
  (b) prevent anyone else from publicising a matter or a person's name; or
  (c) affect any obligation (however imposed) on anyone to publicise a matter or a person's name.

123 Identity cards

(1) The Secretary may issue an identity card to any of the following:
  (a) an authorised officer;
  (b) an approved auditor;
  (c) any other person who performs functions or duties or exercises powers under this Act and is prescribed by the rules.

(2) The identity card must:
  (a) be in the form approved by the Secretary; and
  (b) contain a recent photograph of the person.

(3) Subject to subsection (6), if the Secretary issues an identity card to an authorised officer under paragraph (1)(a), the authorised officer must carry the identity card at all times when performing functions or duties or exercising powers as an authorised officer.

(4) Subject to subsection (6), if the Secretary issues an identity card to an approved auditor under paragraph (1)(b), the approved auditor must carry the identity card at all times when conducting an audit under Division 4 of Part 2.

(5) Subject to subsection (6), if the Secretary issues an identity card to a person under paragraph (1)(c), the person must carry the identity card at all times when performing functions or duties or exercising powers under this Act.

(6) A person need not carry the identity card in the circumstances prescribed by the rules.

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124 Offence—failure to return identity card

(1) A person contravenes this subsection if:

(a) the person has been issued with an identity card under subsection 123(1); and

(b) the person ceases to be a person referred to in paragraph 123(1)(a), (b) or (c); and

(c) the person does not, within 14 days after so ceasing, return the person's identity card to the Secretary.

(2) Subsection (1) does not apply:

(a) to an authorised officer whose authorisation has been suspended; or

(b) 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*).

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

Penalty: 1 penalty unit.

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Part 3—Authorised officers

Division 1—Authorisation

125 Authorisation of persons to be authorised officers

Commonwealth authorised officers and State or Territory authorised officers

(1) The Secretary may, in writing, authorise a person to be an authorised officer under this Act if:
  (a) the person is an officer or employee of:
    (i) the Commonwealth; or
    (ii) an authority of the Commonwealth; or
  (b) the person is an officer or employee of:
    (i) a State or Territory; or
    (ii) an authority of a State or Territory.

(2) The Secretary must not authorise an officer or employee of a State or Territory, or an authority of a State or Territory, to be an authorised officer unless an arrangement is in force under section 128 in relation to the officer or employee.

Third party authorised officers

(3) A person who is not an officer or employee of the Commonwealth, an authority of the Commonwealth, a State or Territory, or an authority of a State or Territory may apply to the Secretary to be a third party authorised officer.

Secretary must decide whether to authorise person to be third party authorised officer

(4) On receiving an application from a person made under subsection (3), the Secretary must decide:

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(a) to authorise the person to be a third party authorised officer; or

(b) to refuse to authorise the person to be a third party authorised officer.

Note: A decision to refuse to authorise the person to be a third party authorised officer is a reviewable decision (see section 151) and the Secretary must give the person written notice of the decision (see section 152).

(5) The Secretary may, in writing, authorise a person to be a third party authorised officer if:

(a) the person has made an application under subsection (3); and

(b) the person has given the Secretary a written notice stating:

(i) the interests, pecuniary or otherwise, of the person that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer; or

(ii) if the person has no such interests—that fact; and

(c) any other requirement prescribed by the rules is met.

Note: A Commonwealth authorised officer or a State or Territory authorised officer may be required under other legislation to disclose interests that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer (see, for example, the *Public Governance, Performance and Accountability Act 2013*).

Training and qualification requirements

(6) The Secretary must not authorise a person to be an authorised officer unless the Secretary is satisfied that:

(a) the person satisfies the training and qualification requirements determined under subsection (7); or

(b) the person will satisfy those training and qualification requirements before the person exercises any powers, or performs any functions, as an authorised officer.

(7) The Secretary must determine, in writing, training and qualification requirements for authorised officers.

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(8) A determination made under subsection (7) is not a legislative instrument.

Instrument of authorisation

(9) The instrument of authorisation of a person as an authorised officer:

(a) must specify:

(i) the functions and powers that the person may perform or exercise as an authorised officer under this Act; and

(ii) any conditions prescribed by the rules that the Secretary has decided, under paragraph 126(1)(a), are not to be conditions of the authorisation; and

(iii) any additional conditions of the authorisation imposed under paragraph 126(1)(b); and

(b) may specify the period during which the authorisation has effect.

126 Conditions of authorisation

(1) If the Secretary authorises a person to be an authorised officer, the authorisation is subject to:

(a) the conditions (if any) in relation to the authorisation prescribed by the rules (other than any of those conditions that the Secretary decides are not to be conditions of the authorisation); and

(b) any additional conditions that the Secretary considers appropriate; and

(c) if the person is authorised to be a third party authorised officer—the condition that the officer must comply with subsections (2) and (3).

Note 1: A person who is third party authorised officer may commit an offence or be liable to a civil penalty if the person contravenes a condition of the person's authorisation (see section 127).

Note 2: If a person who is a Commonwealth authorised officer or a State or Territory authorised officer contravenes a condition of the person's authorisation, the person may breach a code of conduct that applies to

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the person (see, for example, the Code of Conduct under the *Public Service Act 1999*).

Note 3: A decision to authorise a person to be a third party authorised officer subject to additional conditions is a reviewable decision (see section 151).

Third party authorised officer must disclose conflicts

(2) A third party authorised officer must give written notice to the Secretary of each interest, pecuniary or otherwise, that the authorised officer acquires and that conflicts or could conflict with the proper performance of the authorised officer's functions or exercise of the authorised officer's powers.

Note: A Commonwealth authorised officer or a State or Territory authorised officer may be required under other legislation to disclose interests that conflict or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer (see, for example, the *Public Governance, Performance and Accountability Act 2013*).

(3) A third party authorised officer who is required to give notice of an interest under subsection (2) must give the notice as soon as practicable after the authorised officer acquires the interest.

127 Third party authorised officers must not contravene conditions of authorisation

(1) A person contravenes this subsection if:
  (a) the person is a third party authorised officer; and
  (b) the person engages in conduct; and
  (c) the conduct contravenes a condition of the person's authorisation as a third party authorised officer.

Fault-based offence

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

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Civil penalty provision

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

Civil penalty: 240 penalty units.

128 Arrangements for State or Territory officers or employees to be authorised officers

(1) The Secretary may enter into an arrangement with a State or Territory, or an authority of a State or Territory, for officers or employees of the State, Territory or authority to be authorised to be authorised officers.

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

129 Training and qualification requirements for authorised government enforcement officers

(1) The Secretary must determine, in writing, training and qualification requirements for authorised government enforcement officers in relation to the performance of functions or duties and the exercise of powers under Division 1 of Part 2 or the Regulatory Powers Act.

(2) A determination made under subsection (1) is not a legislative instrument.

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Division 2—Variation, suspension and revocation of authorisation

Subdivision A—Variation, suspension and revocation on Secretary's own initiative

130 Variation of authorisation

(1) Subject to section 133 (which applies in relation to third party authorised officers), the Secretary may, at any time, by notice in writing given to a person who is an authorised officer, do any of the following in relation to the person's authorisation as an authorised officer:

(a) vary the functions that the person may perform, or the powers that the person may exercise, as an authorised officer under this Act;

(b) vary any conditions to which the person's authorisation is subject under paragraph 126(1)(b) (including by imposing new conditions);

(c) if the person's instrument of authorisation specifies a period during which it has effect—vary the period during which the authorisation has effect;

(d) if the person's instrument of authorisation does not specify a period during which it has effect—vary the authorisation to specify a period during which the authorisation is to have effect;

(e) vary any other aspect of the person's authorisation.

Note: A decision under this subsection in relation to a third party authorised officer is a reviewable decision (see section 151).

(2) If the person was given a notice in accordance with subsection 133(3) that included the request referred to in paragraph 133(3)(b), the variation must not take effect before the earlier of the following:

(a) the day after any response to the request is received by the Secretary;

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(b) the end of 14 days after the notice was given.

(3) If the Secretary makes a variation in relation to a person's authorisation as an authorised officer under subsection (1), the Secretary must:

(a) vary the person's instrument of authorisation to include the variation; and

(b) give the person the varied instrument of authorisation.

131 Suspension of authorisation

(1) Subject to section 133 (which applies in relation to third party authorised officers), the Secretary may, at any time, by notice in writing given to a person who is an authorised officer, suspend the person's authorisation as an authorised officer.

Note: A decision under this subsection in relation to a third party authorised officer is a reviewable decision (see section 151).

Period of suspension

(2) A suspension must not be for more than 12 months.

(3) If the person was given a notice in accordance with subsection 133(3) that included the request referred to in paragraph 133(3)(b), the suspension must not start before the earlier of the following:

(a) the day after any response to the request is received by the Secretary;

(b) the end of 14 days after the notice was given.

(4) The Secretary may vary the period of a suspension by written notice to the person. However, the total period of the suspension must not be more than 12 months.

Note: A decision to extend the period of a suspension of a person's authorisation as a third party authorised officer is a reviewable decision (see section 151).

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Effect of suspension

(5) If a person's authorisation as an authorised officer is suspended for a period under subsection (1), the person is taken not to be an authorised officer during the period of the suspension.

Note: If a person's authorisation as a third party authorised officer is suspended:

(a) the Minister may require an audit to be conducted in relation to the performance of functions and the exercise of powers by the person as a third party authorised officer (see section 110); or

(b) the Secretary request the person to notify the Secretary of certain events (see section 137).

Revocation of suspension

(6) The Secretary may revoke a suspension of a person's authorisation as an authorised officer under subsection (1) by written notice to the person.

Note: For the purpose of deciding whether to revoke the suspension, the Secretary may request the person to notify the Secretary of certain events (see section 137).

132 Revocation of authorisation

(1) Subject to section 133 (which applies in relation to third party authorised officers), the Secretary may, at any time, revoke the authorisation of a person as an authorised officer (including a person in relation to whom a suspension is in effect under section 131 or 135) by notice in writing given to the person.

Note: A decision under this subsection in relation to a third party authorised officer is a reviewable decision (see section 151).

(2) If the person was given a notice in accordance with subsection 133(3) that included the request referred to in paragraph 133(3)(b), the revocation must not take effect before the earlier of the following:

(a) the day after any response to the request is received by the Secretary;

(b) the end of 14 days after the notice was given.

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133 Notice of proposed action must be given to third party authorised officer

(1) The Secretary must not take action (the ***proposed action***) under subsection 130(1), 131(1) or 132(1) in relation to a person who is a third party authorised officer unless the Secretary has given a written notice to the person in accordance with subsection (3) of this section.

(2) Subsection (1) does not apply if the Secretary reasonably believes that the proposed action is necessary to prevent or lessen a serious and imminent threat to human or environmental health.

(3) The notice must:
  (a) state that the Secretary is considering taking the proposed action and the reasons for the proposed action; and
  (b) request the person to give the Secretary, within 14 days after the day the notice is given to the person, a written statement showing cause why the proposed action should not be taken; and
  (c) include a statement setting out the person's right to seek review of a decision to take the proposed action.

Subdivision B—Variation, suspension and revocation on application or request by third party authorised officer

134 Application for variation of authorisation

(1) A person who is a third party authorised officer may apply to the Secretary to:
  (a) vary the functions that the person may perform, or the powers that the person may exercise, as a third party authorised officer under this Act; or
  (b) vary any conditions to which the person's authorisation is subject under paragraph 126(1)(b) (including by imposing new conditions); or

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(c) vary any other aspect of the person's authorisation.

Secretary must decide whether to make variation

(2) The Secretary must decide:
(a) to make the variation; or
(b) to refuse to make the variation.

Note: A decision to refuse to make the variation is a reviewable decision (see section 151) and the Secretary must give the applicant written notice of the decision (see section 152).

Notice of decision

(3) If the Secretary makes a variation under paragraph (2)(a) in relation to the person's authorisation as a third party authorised officer, the Secretary must:
(a) vary the person's instrument of authorisation to include the variation; and
(b) give the person the varied instrument of authorisation.

135 Request for suspension of authorisation

(1) A person who is a third party authorised officer may request the Secretary, in writing, to suspend the person's authorisation as a third party authorised officer.

(2) The Secretary must, by written notice to the person, suspend the person's authorisation as a third party authorised officer as requested, with effect on the day specified in the notice.

Effect of suspension

(3) If a person's authorisation as a third party authorised officer is suspended for a period under subsection (2), the person is taken not to be a third party authorised officer during the period.

Note: If a person's authorisation as a third party authorised officer is suspended:

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(a) the Minister may require an audit to be conducted in relation to the performance of functions and the exercise of powers by the person as a third party authorised officer (see section 110); or

(b) the Secretary may request the person to notify the Secretary of certain events (see section 137).

Request to revoke suspension

(4) If a person's authorisation as a third party authorised officer is suspended under subsection (2), the person may request the Secretary, in writing, to revoke the suspension.

(5) The Secretary may:

(a) if the Secretary is satisfied there is no reason why the suspension should not be revoked—revoke the suspension by written notice to the person; or

(b) in any other case:

(i) suspend the person's authorisation as a third party authorised officer under subsection 131(1); or

(ii) revoke the person's authorisation as a third party authorised officer under subsection 132(1).

Note 1: For the purpose of deciding whether to revoke the suspension, the Secretary may request the person to notify the Secretary of certain events (see section 137).

Note 2: A decision to suspend or revoke a person's authorisation as a third party authorised officer under subsection 131(1) or 132(1) is a reviewable decision (see section 151).

136 Request for revocation of authorisation

(1) A person who is a third party authorised officer (including a person in relation to whom a suspension is in effect under section 131 or 135) may request the Secretary, in writing, to revoke the person's authorisation as a third party authorised officer.

(2) The Secretary must, by written notice to the person, revoke the person's authorisation as a third party authorised officer with effect on the day specified in the notice.

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Subdivision C—Other provisions

137 Secretary may request notification of certain events by suspended third party authorised officer

(1) This section applies in relation to a person whose authorisation as a third party authorised officer is suspended for a period under section 131 or 135.

(2) For the purpose of deciding whether to revoke the suspension, the Secretary may, in writing, request the person to notify the Secretary, in writing, within 14 days after the request is made:

(a) of any notifiable event in relation to the person that has occurred since the person's authorisation was suspended; or

(b) if no notifiable event in relation to the person has occurred since the person's authorisation was suspended—of that fact.

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 146 and 147 of this Act and sections 137.1 and 137.2 of the *Criminal Code*).

(3) Each of the following is a notifiable event in relation to a person for the purposes of paragraph (2)(a):

(a) the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, an Australian law for a contravention involving fraud or dishonesty;

(b) the person acquired an interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of functions or exercise of powers by the person as an authorised officer;

(c) a pecuniary penalty imposed on the person for a contravention of a provision of a law that is administered by the Minister became due and payable;

(d) a liability of the person for an amount under a Commonwealth law prescribed by the rules became due and payable.

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Division 3—Functions and powers

138 Rules may confer functions or powers on authorised officers

The rules may confer functions or powers on authorised officers that are necessary or convenient to be performed or exercised for the purposes of achieving the objects of this Act.

139 Functions and powers of authorised officers

(1) An authorised officer has the functions and powers conferred on an authorised officer by this Act that are specified in the authorised officer's instrument of authorisation.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of ***this Act*** in section 10). See also section 138 which provides for the rules to confer functions or powers on an authorised officer.

Secretary may give directions to authorised officer

(2) The Secretary may give a direction to an authorised officer about the performance of the authorised officer's functions or the exercise of the authorised officer's powers.

Note: See also section 107 (general provisions relating to directions).

Commonwealth authorised officer may give directions to third party authorised officers

(3) A Commonwealth authorised officer may give a direction to a third party authorised officer about the performance of functions or the exercise of powers by the third party authorised officer.

Note: See also section 107 (general provisions relating to directions).

Authorised officer must comply with directions

(4) In performing functions or exercising powers under this Act, an authorised officer must comply with any directions given to the authorised officer under subsection (2) or (3).

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140 Third party authorised officer must not contravene direction

Fault-based offence

(1) A third party authorised officer commits an offence if:
  (a) the authorised officer is given a direction under subsection 139(2) or (3); and
  (b) the authorised officer engages in conduct; and
  (c) the conduct contravenes the direction.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Civil penalty provision

(2) A third party authorised officer is liable to a civil penalty if the authorised officer contravenes subsection 139(4).

Civil penalty: 240 penalty units.

141 Certain authorised officers may charge fees

(1) A State or Territory authorised officer, or a third party authorised officer, may charge a fee in relation to things done in the performance of the authorised officer's functions, or the exercise of the authorised officer's powers, under this Act.

Note: Fees may also be charged in relation to the performance of functions, or the exercise of powers, by or on behalf of a Commonwealth authorised officer (see section 155).

(2) A fee must not be such as to amount to taxation.

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Part 4—Record-keeping

142 Requirements to make and retain records

(1) The rules may make provision for and in relation to requiring records to be made and retained by one or more of the following:
  (a) holders, or former holders, of export licences;
  (b) persons who carry out, or have carried out, export operations in relation to regulated waste material;
  (c) accrediting authorities;
  (d) administrators of accredited voluntary arrangements;
  (e) liable parties in relation to products;
  (f) administrators of approved co-regulatory arrangements;
  (g) persons who are required to take, or not to take, specified action in relation to products under rules made for the purposes of section 92;
  (h) any person who is performing functions or exercising powers under this Act;
  (i) any person who has performed functions or exercised powers under this Act;
  (j) any other person prescribed by the rules.

(2) Without limiting subsection (1), the rules may make provision for and in relation to any of the following:
  (a) the kind of records that must be made and retained;
  (b) the form in which records must be made and retained;
  (c) the period for which records must be retained;
  (d) the secure retention of records.

(3) A person contravenes this subsection if:
  (a) the person is subject to a requirement under rules made for the purposes of subsection (1); and
  (b) the person fails to comply with the requirement.

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Strict liability offence

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

Penalty: 60 penalty units.

Civil penalty provision

(5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 250 penalty units.

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Part 5—Information management

Division 1—Information gathering powers

143 Power to require information or documents

(1) The Minister may, by notice in writing given to a person, require the person, within a reasonable time stated in the notice, to give the Minister any information, or produce to the Minister any documents, specified in the notice that relate to:

(a) any regulated waste material that has been, or is intended to be, exported; or

(b) waste material export charge; or

(c) an accredited voluntary arrangement; or

(d) an approved co-regulatory arrangement in relation to a product; or

(e) requirements made under rules made for the purposes of subsection 92(1) (mandatory product stewardship requirements); or

(f) a matter prescribed by the rules.

(2) A person contravenes this subsection if:

(a) the person is subject to a requirement under subsection (1); and

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

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 146 and 147 of this Act and sections 137.1 and 137.2 of the *Criminal Code*).

Fault-based offence

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

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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Civil penalty provision

(4) A person is liable to a civil penalty if the person contravenes subsection (2).

Civil penalty: 240 penalty units.

Interaction with section 144

(5) This section does not limit section 144.

144 Providing and disseminating information

Provision of information

(1) The rules may require a person to provide to the Minister information relating to the objects of this Act, for statistical purposes (including purposes in connection with the collation, analysis and dissemination of statistical information).

(2) The rules may also require a constitutional corporation to provide to the Minister information relating to:

(a) products used, designed, manufactured or distributed by the corporation, including the reuse, remanufacture, recycling or recovery of those products; or

(b) waste from products used, designed, manufactured or distributed by the corporation; or

(c) actions taken by the corporation to:

(i) reduce or avoid generating waste from products through improvements in the design of products; or

(ii) improve the durability, reparability and reusability of products; or

(d) waste from products generated by the corporation; or

(e) activities relating to reuse, remanufacture, recycling or recovery undertaken by the corporation, including use by the corporation of recycled materials.

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(3) The rules may also require a person to provide to the Minister information relating to activities conducted by the person in relation to:
  (a) importing or exporting waste from products; or
  (b) importing or exporting waste material; or
  (c) importing or exporting products that contain, or are derived from, recycled waste material.

(4) Subsections (1), (2) and (3) do not limit each other.

Collating, analysis and disseminating information

(5) The Minister may collate, analyse and disseminate information (including by publishing reports and papers) provided under rules made for the purposes of subsection (1), (2) or (3).

(6) Disseminating information (including by publishing reports and papers) for the purposes of subsection (5) must be in accordance with any requirements prescribed by the rules.

(7) A person contravenes this subsection if:
  (a) the person is subject to a requirement under rules made for the purposes of subsection (1), (2) or (3); and
  (b) the person fails to comply with the requirement.

Strict liability offence

(8) A person commits an offence of strict liability if the person contravenes subsection (7).

Penalty: 60 penalty units.

Civil penalty provision

(9) A person is liable to a civil penalty if the person contravenes subsection (7).

Civil penalty: 250 penalty units.

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Division 2—False or misleading information or documents

145 False or misleading statements in applications

(1) A person is liable to a civil penalty if:

(a) the person makes a statement (whether orally, in a document or in any other way) in, or in connection with, an application made under this Act; and

(b) the person does so knowing that the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading.

Civil penalty: 600 penalty units.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

146 False or misleading information

(1) A person is liable to a civil penalty if:

(a) the person gives information in compliance or purported compliance with this Act; and

(b) the person does so knowing that the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading.

Civil penalty: 600 penalty units.

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(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(4) Subsection (1) does not apply if, before the information was given by a person to another person (the ***official***) in compliance or purported compliance with this Act, the official did not take reasonable steps to inform the person that the person may be liable to a civil penalty for contravening subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

147 False or misleading documents

(1) A person is liable to a civil penalty if:

(a) the person produces a document to another person; and

(b) the person does so knowing that the document is false or misleading; and

(c) the document is produced in compliance or purported compliance with this Act.

Civil penalty: 600 penalty units.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

(3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

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(a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

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Division 3—Protecting information

148 Offence—using or disclosing commercially sensitive information

Offence

(1) A person commits an offence if:

(a) the person obtains protected information in the course of, or for the purposes of, performing functions or duties or exercising powers under this Act; and

(b) the person uses or discloses the information; and

(c) there is a risk that the use or disclosure might substantially prejudice the commercial interests of another person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Exception—authorised use or disclosure

(2) Subsection (1) does not apply if the use or disclosure is authorised by section 149 (authorised uses and disclosures).

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

*Definition of **protected information***

(3) ***Protected information*** is information that was disclosed or obtained under or for the purposes of this Act.

149 Authorised uses and disclosures

(1) A person may use or disclose protected information if:

(a) the use or disclosure is made for the purposes of:

(i) performing a duty or function, or exercising a power, under or in relation to this Act; or

(ii) enabling another person to perform duties or functions, or exercise powers, under or in relation to this Act; or

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(iii) assisting in the administration or enforcement of another Australian law; or

(b) the use or disclosure is required or authorised by or under:

(i) a Commonwealth law (including this Act); or

(ii) a law, of a State or Territory, that is prescribed by the rules; or

(c) the person referred to in paragraph 148(1)(c) has consented to the use or disclosure; or

(d) at the time of the use or disclosure, the protected information is already lawfully publicly available; or

(e) both:

(i) the use or disclosure is, or is a kind of use or disclosure that is, certified in writing by the Minister to be in the public interest; and

(ii) the use or disclosure is made in accordance with any requirements prescribed by the rules; or

(f) both:

(i) the person believes on reasonable grounds that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person; and

(ii) the use or disclosure is for the purposes of preventing or lessening that threat; or

(g) both:

(i) the person believes on reasonable grounds that the use or disclosure is necessary to prevent or lessen a serious threat to environmental health; and

(ii) the use or disclosure is for the purposes of preventing or lessening that threat; or

(h) both:

(i) the information used or disclosed is a summary of, or statistics derived from, protected information; and

(ii) the information is not likely to enable the identification of a person.

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(2) An instrument made under subparagraph (1)(e)(i) certifying that a particular use or disclosure is in the public interest is not a legislative instrument.

(3) An instrument made under subparagraph (1)(e)(i) certifying that a kind of use or disclosure is in the public interest is a legislative instrument.

150 Disclosing commercially sensitive information to courts and tribunals etc.

(1) This section applies if:

(a) information or a document is disclosed to, or obtained by, a person (the ***public official***) in the course of the person performing a function or duty, or exercising a power, under or in relation to this Act; and

(b) there is a risk that disclosure of the information or document might substantially prejudice the commercial interests of a person other than the public official.

Information not to be disclosed to court or tribunal

(2) The public official must not, except for the purposes of this Act, be required to disclose the information to, or produce the document in or to, a court, tribunal, authority or other person having power to require the production of documents or the answering of questions.

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Part 6—Review of decisions

151 Persons *affected* by *reviewable decisions*

(1) Column 1 of the table sets out each person ***affected*** by a reviewable decision. Column 2 of the table sets out the ***reviewable decision*** that a particular person is affected by.

Persons affected by reviewable decisions

Item	Column 1 Person *affected*	Column 2 *Reviewable decision*
1	A person who applies for an exemption under section 25	A decision by the Minister under paragraph 26(1)(b) to refuse to grant the exemption
2	A person who applies for an export licence under section 33	A decision by the Minister under paragraph 34(1)(b) to refuse to grant the export licence
3	A person who applies for an export licence under section 33	A decision by the Minister under paragraph 35(1)(c) to grant the export licence subject to additional conditions
4	The applicant for the renewal	A decision by the Minister under paragraph 39(1)(b) to refuse to renew the export licence
5	The holder of an export licence	A decision by the Minister under paragraph 40(1)(c) to subject a renewed export licence to additional conditions
6	The holder of an export licence	A decision by the Minister under paragraph 42(3)(b) to refuse to make a variation in relation to the export licence
7	The holder of an export licence	A decision by the Minister under subsection 44(1) to vary the export

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Persons affected by reviewable decisions		
Item	**Column 1** **Person *affected***	**Column 2** ***Reviewable decision***
		licence
8	The holder of an export licence	A decision by the Minister under section 46 or 47 to suspend the export licence wholly or in part
9	The holder of an export licence	A decision by the Minister under subsection 49(2) to extend the period of a suspension of an export licence
10	The former holder of an export licence	A decision by the Minister under subsection 54(1) or 55(1) to revoke the export licence
11	The applicant for accreditation of a voluntary arrangement	A decision by an accrediting authority under rules made for the purposes of section 70 to refuse to accredit the voluntary arrangement in relation to a product
12	The applicant for accreditation of a voluntary arrangement	A decision by an accrediting authority under rules made for the purposes of section 70 to impose conditions on the voluntary arrangement's accreditation in relation to a product
13	The following persons: (a) the administrator of an accredited voluntary arrangement; (b) a person authorised in accordance with an accredited voluntary arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo	A decision by an accrediting authority under rules made for the purposes of section 70 to cancel, or refuse to cancel, the accreditation of the voluntary arrangement in relation to a product
14	A person who applies to the Minister to vary or revoke a notice given under subsection 76(4)	A decision by the Minister under subsection 76(8) or (9) to vary the notice, or to refuse to vary or revoke

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Persons affected by reviewable decisions		
Item	**Column 1** **Person *affected***	**Column 2** ***Reviewable decision***
		the notice
15	The administrator of a co-regulatory arrangement	A decision by the Minister under section 85 to refuse to approve the co-regulatory arrangement in relation to a product
16	The administrator of an approved co-regulatory arrangement	A decision by the Minister under section 87 to cancel or to refuse to cancel the approval of the co-regulatory arrangement in relation to a product
17	A prospective liable party in relation to whom the Minister has made a determination under section 89	A decision by the Minister under section 89 to make the determination
18	A person who applies for approval under section 91 of the person's appointment as a replacement administrator of an approved co-regulatory arrangement	A decision by the Minister under section 91 to refuse to approve the appointment
19	A person who has applied to be a third party authorised officer	A decision by the Secretary under paragraph 125(4)(b) to refuse to authorise the person
20	A person whom the Secretary authorises to be a third party authorised officer	A decision by the Secretary under paragraph 126(1)(b) to authorise the person subject to additional conditions
21	A third party authorised officer	A decision by the Secretary under paragraph 130(1)(a) to vary the functions or powers that the third party authorised officer may perform or exercise
22	A third party authorised officer	A decision by the Secretary under paragraph 130(1)(b) to vary the conditions to which the officer's authorisation as a third party

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Persons affected by reviewable decisions		
Item	**Column 1** **Person *affected***	**Column 2** ***Reviewable decision***
		authorised officer is subject
23	A third party authorised officer	A decision by the Secretary under paragraph 130(1)(c) to shorten the period of effect of the officer's authorisation as a third party authorised officer
24	A third party authorised officer	A decision by the Secretary under paragraph 130(1)(d) to specify a period of effect of the officer's authorisation as a third party authorised officer
25	A third party authorised officer	A decision by the Secretary under subsection 131(1) to suspend the officer's authorisation as a third party authorised officer
26	A third party authorised officer	A decision by the Secretary under subsection 131(4) to extend the period of a suspension of the officer's authorisation as a third party authorised officer
27	A former third party authorised officer	A decision by the Secretary under subsection 132(1) to revoke the former officer's authorisation as a third party authorised officer
28	A third party authorised officer	A decision by the Secretary under paragraph 134(2)(b) to refuse to make a variation in relation to the officer's authorisation as a third party authorised officer

(2) The rules may also:

(a) provide that a decision made under a specified provision of this Act is a ***reviewable decision***; and

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(b) specify the person who is a person ***affected*** by the reviewable decision.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of ***this Act*** in section 10).

152 Notice of decisions and review rights

As soon as practicable after making a reviewable decision, the person who made the decision must give a written notice to each person affected by the decision, containing:

(a) the terms of the decision; and

(b) the reasons for the decision; and

(c) a statement setting out particulars of the person's review rights.

153 Internal review

(1) A person affected by a reviewable decision (other than a decision made by the Minister personally) may apply in writing to the Minister for review (the ***internal review***) of the decision.

(2) An application for internal review must be made within:

(a) 30 days after the day on which the decision first came to the notice of the applicant; or

(b) such further period (if any) as the Minister allows (either before or after the end of the 30 days).

(3) On receiving an application, the Minister must review the reviewable decision.

(4) The Minister may:

(a) make a decision affirming, varying or revoking the reviewable decision; and

(b) if the Minister revokes the decision, make such other decision (if any) as the Minister thinks appropriate.

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Section 154

154 Review of decisions by Administrative Appeals Tribunal

(1) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions:

(a) a reviewable decision made by the Minister personally;

(b) an internal review decision made by the Minister under subsection 153(4).

(2) An application under subsection (1) may be made only by, or on behalf of, a person affected by the reviewable decision.

(3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

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Part 7—Fees and charges

Division 1—Fees

155 Charging of fees

(1) The rules may make provision in relation to the charging of fees relating to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

Note: Fees may also be charged by:
(a) approved auditors (see section 117); and
(b) State or Territory authorised officers and third party authorised officers (see section 141).

(2) Without limiting subsection (1), the rules may do any of the following:
(a) prescribe a fee by specifying the amount of the fee or a method of working out the fee;
(b) specify that the amount of a fee is the cost incurred by the Commonwealth in arranging and paying for another person to carry out the relevant activity;
(c) make provision in relation to deposits to be paid in relation to fees;
(d) prescribe one or more persons who are liable to pay a specified fee;
(e) prescribe the time when a specified fee is due and payable;
(f) make provision in relation to penalties for late payment of specified fees;
(g) make provision in relation to the refund, remission or waiver of specified fees or penalties for late payment of specified fees;
(h) make provision in relation to:
(i) the liability of a person's agent to pay fees on behalf of the person; and

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(ii) the recovery of such fees from the person by the agent.

(3) Without limiting subsection (1) or (2), the rules may provide for the Minister to make decisions in relation to the matters mentioned in paragraph (2)(e) or (g).

(4) A fee prescribed for the purposes of subsection (1) must not be such as to amount to taxation.

156 Commonwealth not liable to pay a fee

(1) The Commonwealth is not liable to pay a fee that is payable under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a fee.

(2) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.

(3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.

(4) Directions under subsection (2) are not legislative instruments.

(5) In subsections (1) and (2):

Commonwealth includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

157 Recovery of fees

A fee that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

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158 Minister may direct that activities not be carried out

If a fee under this Act is due and payable by a person (the ***debtor***), the Minister may refuse to carry out, and direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the fee has been paid.

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Division 2—Waste material export charge

159 Rules relating to waste material export charge

The rules may make provision for, or in relation to, all or any of the following matters:

(a) when a specified waste material export charge is due and payable;

(b) the issue of notices setting out the amount of waste material export charges payable by persons who are liable to pay the charges;

(c) the issue of notices extending the time for payment of waste material export charges;

(d) penalties for late payment of waste material export charges;

(e) to whom waste material export charges and any penalties for late payment are payable;

(f) the refund, remission or waiver of waste material export charges or penalties for late payment;

(g) the review of decisions made under the rules in relation to the collection or recovery of waste material export charges;

(h) the giving of information and keeping of records relating to a person's liability to pay waste material export charges;

(i) any other matters relating to the collection or recovery of waste material export charges.

160 Recovery of waste material export charge and late payment penalty

Waste material export charge, or a penalty for late payment of waste material export charge, that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a relevant court.

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161 Minister may direct that activities not be carried out

(1) This section applies if a person (the ***debtor***) is liable to pay waste material export charge, or a penalty for late payment of waste material export charge, that is due and payable.

(2) The Minister may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the charge or penalty has been paid.

162 Commonwealth liable to pay waste material export charge and late payment penalties

(1) The Commonwealth is not liable to pay waste material export charge or a penalty for late payment of waste material export charge that is payable under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay such a charge or penalty.

(2) The Finance Minister may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.

(3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.

(4) Directions under subsection (2) are not legislative instruments.

(5) In subsections (1) and (2):

Commonwealth includes a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) that cannot be made liable to taxation by a Commonwealth law.

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Part 8—Other matters

163 Methods for taking, testing and analysing certain samples

(1) This section applies in relation to a sample of waste material or any other thing that is to be taken, tested or analysed under this Act (other than in the performance of functions or duties or the exercise of powers under Part 2 of Chapter 4 (compliance and enforcement) or the Regulatory Powers Act).

(2) The sample must be taken, tested or analysed in accordance with:

(a) if a method is prescribed by the rules for that kind of sample—the prescribed method; or

(b) in any other case:

(i) an applicable method specified in an Australian Standard published by, or on behalf of, Standards Australia; or

(ii) any other appropriate, validated and science-based method approved by the Secretary.

164 Storage of samples

The rules may make provision for and in relation to the storage of samples that may be tested or analysed under this Act.

165 Test or analysis may result in destruction or reduction in value of sample

A person who is required or permitted to test or analyse a sample of waste material or any other thing under this Act may carry out tests or analysis that result in the destruction, or a reduction in the value, of the sample or a package or waste material associated with the sample.

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166 Appointment of analyst

(1) The Secretary may appoint a person to be an analyst for the purposes of this Act.

(2) The Secretary must not appoint a person to be an analyst for the purposes of this Act unless the Secretary is satisfied that:
  (a) the person satisfies the training and qualification requirements determined under subsection (3); or
  (b) the person will satisfy those training and qualification requirements before the person exercises any powers as an analyst for the purposes of this Act.

(3) The Secretary must determine, in writing, training and qualification requirements for analysts.

(4) A determination under subsection (3) is not a legislative instrument.

167 Analyst may give certificate

(1) If a person is alleged to have contravened this Act in relation to waste material or any other thing, an analyst appointed under section 166 may give a written certificate stating one or more of the following matters:
  (a) when and from whom the waste material or other thing was received;
  (b) what (if any) labels or other means of identifying the waste material or other thing accompanied the waste material or other thing when it was received;
  (c) what covering the waste material or other thing was in when it was received;
  (d) a description, and the weight, of the waste material or other thing received;
  (e) when the waste material or other thing, or a portion or sample of the waste material or other thing, was tested or analysed;
  (f) a description of the method of testing or analysis;
  (g) the results of the testing or analysis;

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(h) how the waste material or other thing was dealt with after handling by the analyst, including details of:
(i) the quantity retained; and
(ii) the name of any person to whom any retained quantity was given; and
(iii) measures taken to secure any retained quantity.

Note: In certain circumstances, the certificate may be admitted as evidence in proceedings in relation to the contravention (see section 168).

(2) A certificate under subsection (1) must be in a form approved by the Secretary.

168 Admission of analyst's certificate in proceedings

(1) A certificate given under section 167 is (if the procedure in subsection (2) of this section is complied with) admissible, in any proceedings in relation to a contravention of this Act, as prima facie evidence of:
(a) the matters in the certificate; and
(b) the correctness of the result of the analysis to which the certificate relates.

Procedure to be followed before admitting certificate

(2) At least 14 days before the certificate is admitted as evidence in the proceedings, the following must be given to the person (the ***defendant***) who is alleged to have contravened this Act, or a legal practitioner who is appearing for the defendant in the proceedings:
(a) a copy of the certificate;
(b) notice of the intention to produce the certificate as evidence in the proceedings.

Analyst may be required to attend for cross-examination

(3) The defendant may (subject to subsection (4)) require the analyst who gave the certificate to be:
(a) called as a witness for the person who instituted the proceedings; and

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(b) cross-examined (as if the analyst had given evidence of the matters stated in the certificate).

Requirements for cross-examining analyst

(4) The analyst may be required to be called as a witness for the person who instituted the proceedings only if:
(a) the person who instituted the proceedings has been given at least 4 days' notice of the defendant's intention to require the analyst to be called; or
(b) the court, by order, allows the defendant to require the analyst to be called.

Proof of certificate

(5) For the purposes of this Act, a document purporting to be a certificate given under section 167 is taken to be a certificate that has been given in accordance with that section, unless the contrary is established.

169 Hindering compliance with this Act etc.

(1) A person must not engage in conduct that hinders or prevents another person from:
(a) performing functions or exercising powers under this Act; or
(b) complying with this Act or a direction given under this Act.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

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

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Civil penalty: 600 penalty units.

170 Influencing a person performing functions or duties or exercising powers

(1) A person contravenes this subsection if:
  (a) the person engages in conduct; and
  (b) the person does so with the intention of dishonestly influencing another person in the performance of the other person's functions or duties, or the exercise of the other person's powers, under this Act.

Fault-based offence

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

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Civil penalty provision

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

Civil penalty: 600 penalty units.

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Chapter 5—Other matters

171 Simplified outline of this Chapter

Applications under this Act must comply with certain requirements. A person who has made an application under this Act must give the recipient of the application additional or corrected information in certain circumstances.

There is a test for determining whether a person is a fit and proper person for the purposes of this Act, which includes the Minister having regard to whether the person is financially viable and whether the person has been convicted of certain offences.

The Minister must prepare an annual report on the operation of this Act and must also cause a review in relation to its operation and objects to be conducted within 10 years after the Act commences.

The Minister and the Secretary may delegate their powers and functions to certain persons. However, the Minister cannot delegate the power to make the rules or to publish a Minister's priority list.

This Chapter also deals with other miscellaneous matters (such as treatment of partnerships and protection from civil proceedings).

This Chapter also gives the Minister the power to make rules for the purposes of this Act. The rules are a disallowable legislative instrument.

172 General requirements for making applications

(1) An application under this Act must:

(a) if the Minister has approved, in writing, a manner for making an application—be made in an approved manner; and

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(b) if the Minister has approved a form for making an application:
(i) include the information required by the form; and
(ii) be accompanied by any documents required by the form; and
(c) include the information (if any) prescribed by the rules; and
(d) be accompanied by any documents prescribed by the rules; and
(e) if rules made for the purposes of section 155 specify a fee that must accompany the application and payment of the fee has not been waived—be accompanied by the fee.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 145, 146 and 147 of this Act and sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

(2) The Minister may accept any information or document previously given to the Minister in connection with an application made under this Act as satisfying any requirement to give that information or document under subsection (1).

(3) An application is taken not to have been made if the application does not comply with the requirements in subsection (1) for the application.

(4) To avoid doubt, the Minister may approve:
(a) different forms for applications relating to different matters; or
(b) a single form for more than one kind of application.

173 Additional or corrected information in relation to applications

(1) A person who has made an application to another person (the ***recipient***) under this Act must comply with subsection (2) if:
(a) the person becomes aware that information included in the application, or information or a document given in relation to

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the application to the recipient, was incomplete or incorrect; or

(b) a change prescribed by the rules occurs.

(2) The person must, as soon as practicable, give the recipient additional or corrected information, to the extent that it is relevant to the consideration of the application.

Note: A person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 145, 146 and 147 of this Act and sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

Civil penalty provision

(3) A person is liable to a civil penalty if:

(a) the person is subject to a requirement under subsection (2); and

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

Civil penalty: 60 penalty units.

174 Dealing with applications

(1) The person to whom an application is made may do any of the following in relation to the application:

(a) request the applicant, or another person who the person considers may have information or documents relevant to the application or the applicant, to give the person further specified information or documents relevant to the application or the applicant;

(b) any other thing prescribed by the rules.

(2) A request under subsection (1) must:

(a) be in writing; and

(b) specify the period (which must not be longer than the period prescribed by the rules) within which the request must be complied with.

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175 Fit and proper persons

(1) This section applies for the purposes of determining whether a person is a fit and proper person for the purposes of this Act.

Note: The reference to this Act includes a reference to instruments made under this Act (see the definition of ***this Act*** in section 10).

(2) In determining whether the person is a fit and proper person for the purposes of a provision of this Act, the Minister must have regard to the following matters:

(a) whether the person is financially viable;

(b) whether the person has been convicted of an offence against, or ordered to pay a pecuniary penalty under, any of the following:

(i) this Act;

(ii) the *Biosecurity Act 2015*;

(iii) the *Carbon Credits (Carbon Farming Initiative) Act 2011*;

(iv) the *Environment Protection and Biodiversity Conservation Act 1999*;

(v) the *Export Control Act 2020*;

(vi) the *Hazardous Waste (Regulation of Exports and Imports) Act 1989*;

(vii) the *National Greenhouse and Energy Reporting Act 2007*;

(viii) the repealed *Product Stewardship Act 2011*;

(ix) the *Product Stewardship (Oil) Act 2000*;

(x) another Act prescribed by the rules;

(xi) the *Criminal Code* or the *Crimes Act 1914*, to the extent that it relates to an Act referred to in another subparagraph of this paragraph;

(c) the person's history of compliance with this Act;

(d) if the person has been an administrator of a co-regulatory arrangement—whether the Minister did not approve, or cancelled the approval of, the co-regulatory arrangement

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because the Minister was satisfied that the administrator was not a fit and proper person;

(e) if the person has made an application for an export licence or an application for renewal of an export licence—whether the application was refused;

(f) whether the person:

(i) has made a false or misleading statement in an application under this Act; or

(ii) gave false or misleading information or documents to a person performing functions or exercising powers under this Act;

(g) the history of the person in relation to environmental matters;

(h) whether a debt is due and payable by the person to the Commonwealth under any Act referred to in paragraph (b);

(i) any other matter prescribed by the rules in relation to the provision.

(3) In determining whether the person is a fit and proper person, the Minister may also have regard to the following matters:

(a) whether, under a law of a State or Territory, the person has been given a notice (however described) that:

(i) relates to an environmental matter; and

(ii) requires the person to take, or not to take, specified action to remedy non-compliance, or suspected non-compliance, with the law;

(b) the matters mentioned in subsection (2) as they apply to an associate of the person;

(c) whether the person, or an associate of the person, has been convicted of an offence against, or ordered to pay a pecuniary penalty under, an Australian law (other than an Act referred to in paragraph (2)(b));

(d) whether a debt is due and payable by the person, or an associate of the person:

(i) to the Commonwealth under any Act (other than one referred to in paragraph (2)(b)); or

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(ii) to a State or Territory, under a law of the State or Territory.

(e) any other relevant matter.

(4) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

176 Treatment of partnerships

(1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) An offence against this Act that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership at the time the offence was committed who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(5) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

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177 Treatment of unincorporated associations

(1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.

(3) An offence against this Act that would otherwise have been committed by the association is taken to have been committed by each member of the association's committee of management at the time the offence was committed who:

(a) did the relevant act or made the relevant omission; or

(b) aided, abetted, counselled or procured the relevant act or omission; or

(c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

178 Treatment of trusts

(1) This Act applies to a trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

(2) If the trust has a single trustee:

(a) an obligation that would otherwise be imposed on the trust by this Act is imposed on the trustee instead; and

(b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by the trustee.

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Trusts with multiple trustees

(3) If the trust has 2 or more trustees:

(a) an obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and

(b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust at the time the offence was committed who:

(i) did the relevant act or made the relevant omission; or

(ii) aided, abetted, counselled or procured the relevant act or omission; or

(iii) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

Contraventions of civil penalty provisions

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

179 Arrangements with States and Territories to help give effect to this Act

The Minister may enter into an arrangement with a relevant Minister of a State or Territory in relation to either or both of the following:

(a) the use of any place in the State or Territory for the purposes of this Act, and the control and management of the place;

(b) any matters necessary or convenient to be arranged in order to enable the Commonwealth, the State or the Territory to assist each other for the purposes of achieving the objects of this Act.

Note: The Secretary may enter into arrangements with State or Territory bodies for officers or employees of those bodies to be authorised officers under this Act (see section 128).

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180 Protection from civil proceedings

Protection for the Commonwealth and protected persons

(1) No civil proceeding lies against the Commonwealth or a person (a ***protected person***) covered by subsection (3) in relation to anything done, or omitted to be done, in good faith:

(a) by a protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by this Act; or

(b) by a person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by this Act.

Protection for persons assisting protected persons

(2) No civil proceeding lies against a person in relation to anything done, or omitted to be done, in good faith by the person in providing, or purporting to provide, assistance, information or a document to a protected person, as a result of a request, direction or other requirement made by the protected person in the performance or purported performance of a function or duty, or the exercise or purported exercise of a power, conferred by this Act.

Protected persons

(3) A person is covered by this subsection if the person is, or was, any of the following:

(a) the Minister;

(b) the Secretary;

(c) an authorised officer;

(d) an officer or employee of the Department.

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Relationship to section 183

(4) Subsection (1) is subject to section 183 (compensation for acquisition of property).

181 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a specified provision of this Act in the circumstances prescribed by the rules.

182 Power to arrange for certain decisions to be made by computer programs

(1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary or the Minister may, or must, make a decision covered by subsection (2).

(2) A decision is covered by this subsection if the decision is made under this Act and is prescribed by the rules.

(3) The Secretary must take all reasonable steps to ensure that decisions made by the operation of a computer program under an arrangement made under subsection (1) are correct.

(4) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary or the Minister (as the case requires).

(5) The Secretary or the Minister (as the case requires) may substitute a decision for a decision (the ***initial decision***) made by the operation of a computer program if the Secretary or Minister is satisfied that the initial decision is incorrect.

183 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the

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Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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 the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

184 Annual report

(1) The Minister must prepare a report on the operation of this Act during each financial year.

(2) The Minister must do so as soon as practicable after the end of the financial year.

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

185 Review of operation of this Act

(1) The Minister must cause a review of the following matters to be undertaken:
   (a) the operation of this Act;
   (b) the extent to which the objects of this Act have been achieved.

(2) The review must begin no later than 5 years after the commencement of this Act

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

(4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of the day the Minister receives the report.

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186 Delegation—Minister

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

(a) the Secretary of the Department; or

(b) an SES employee or acting SES employee in the Department.

(2) Subsection (1) does not apply in relation to the Minister's power to make rules under section 188 or to prepare and publish a Minister's priority list.

(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

187 Delegation—Secretary

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

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

188 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:

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

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

(2) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the rules may prescribe a matter or thing differently for different kinds of persons, things or circumstances.

(3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained

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in any other instrument or other writing as in force or existing from time to time.

(4) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(5) In this section, a reference to this Act does not include a reference to the rules.

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

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

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

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

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

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

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

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

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

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

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

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

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

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

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

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

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

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Recycling and Waste Reduction Act 2020	119, 2020	15 Dec 2020	16 Dec 2020 (s 2(1) item 1)	
Recycling and Waste Reduction (Consequential and Transitional Provisions) Act 2020	120, 2020	15 Dec 2020	Sch 4: 1 Sept 2021 (s 2(1) item 3) Note: This amending title was affected by an editorial change (see C2021C00353)	—

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 2	
s 10	am No 120, 2020

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