Public Health (Tobacco and Other Products) Act 2023

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About this compilation

This compilation

This is a compilation of the *Public Health (Tobacco and Other Products) Act 2023* that shows the text of the law as amended and in force on 5 September 2025 (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. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

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.

Presentational changes

The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

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. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to discourage the use of tobacco and other products, and for related purposes

Chapter 1—Preliminary

Part 1.1—Introduction

1 Short title

This Act is the *Public Health (Tobacco and Other Products) Act 2023*.

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. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 December 2023
2. Sections 3 to 185	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 April 2024 (F2024N00275)

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Objects of this Act

Objects of Act

(1) The objects of this Act are:

(a) to improve public health by:

(i) discouraging smoking and the use of regulated tobacco items; and

(ii) encouraging people to give up smoking, and to stop using regulated tobacco items; and

(b) to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control; and

(c) to address the public health risks posed by vaping and the use of e-cigarette products; and

(d) to combat the trade in illicit tobacco and e-cigarette products.

Means for achieving objects

(2) The means for achieving the objects of this Act are the following:

(a) limiting the exposure of the public to communications, recommendations or actions that may persuade people to:

(i) start smoking or continue smoking; or

(ii) start vaping or continue vaping;

(b) reducing the appeal of regulated tobacco items and e-cigarette products to consumers;

(c) preventing the retail packaging of tobacco products from misleading or deceiving consumers about the harmful effects of smoking or using tobacco products;

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(d) increasing consumer knowledge of health effects relating to the use of tobacco products;
(e) increasing the effectiveness of health warnings on, and health promotion messages in, the retail packaging of tobacco products;
(f) discouraging people who have given up smoking or vaping from relapsing;
(g) preventing and reducing nicotine addiction;
(h) reducing people's exposure to smoke from tobacco products;
(i) reducing the environmental risks of tobacco products;
(j) limiting novel developments and emerging innovation in tobacco products;
(k) limiting the risk of e-cigarette products becoming a gateway into smoking and the use of regulated tobacco items;
(l) increasing public knowledge about tobacco products and the tobacco industry;
(m) establishing the Illicit Tobacco and E-cigarette Commissioner.

4 Simplified outline of this Act

This Act is about regulating the advertising and presentation of tobacco and e-cigarette products in order to discourage the use of such products and protect and improve public health.

One of the main objects of this Act is to give effect to obligations that Australia has under the WHO Framework Convention on Tobacco Control. This is done in part by prohibiting the advertising of tobacco products, as well as by prohibiting persons from making tobacco sponsorships.

In order to limit the risk of e-cigarette products becoming a gateway into smoking, and to address the health risks of vaping, this Act includes similar prohibitions in relation to e-cigarette products.

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This Act also specifies a number of requirements that tobacco products must comply with, including requirements and limitations relating to plain packaging, health warnings, the terms that can be used in relation to the brand names or variant names of tobacco products, and the marks that can be included on tobacco product packaging.

A permanent ban on some tobacco products is included as well.

Certain persons are subject to obligations under this Act to report to the Secretary on a variety of matters including the ingredients used in tobacco products, volumes of sales and imports and marketing and promotional expenditure. Usually, the Minister must publish those reports.

A range of compliance and enforcement powers are provided for, including by applying the *Regulatory Powers (Standard Provisions) Act 2014*.

This Act also establishes the Illicit Tobacco and E-cigarette Commissioner.

Various miscellaneous matters are also dealt with by this Act, including the power to make delegations and regulations.

5 Application of this Act

This Act extends to the external Territories.

6 Act binds the Crown

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

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

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7 Operation of State and Territory laws

Concurrent operation of State and Territory laws

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

(2) Without limiting subsection (1), this Act does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:

(a) the law makes an act or omission:

(i) an offence; or

(ii) subject to a civil penalty; and

(b) that (or any similar) act or omission is also:

(i) an offence against this Act; or

(ii) subject to a civil penalty under this Act.

(3) To avoid doubt, subsection (2) applies even if the law of the State or Territory does any one or more of the following in relation to the offence or civil penalty:

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

(b) provides for fault elements that differ from the fault elements applicable to the offence against this Act;

(c) provides for defences or exceptions that differ from the defences or exceptions applicable to the offence against, or civil penalty provision of, this Act.

No doubling-up of liabilities

(4) If:

(a) an act or omission is an offence against this Act and is also an offence against a law of a State or Territory; and

(b) the offender has been punished for the offence under the law of the State or Territory;

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the offender is not liable to be punished for the offence under this Act.

(5) If a person has paid, or been ordered to pay, a pecuniary penalty under a law of a State or Territory, the person is not liable to a civil penalty under this Act in respect of the same conduct.

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Part 1.2—Interpretation

Division 1—General definitions

8 Definitions

In this Act:

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

Australian hosting service provider has the same meaning as in the *Online Safety Act 2021*.

authorised officer means a person appointed as an authorised officer under subsection 150(1).

brand name, in relation to a tobacco product, means the name under which the tobacco product is sold or supplied, or offered for sale or supply.

Note: A brand name must not be or include a prohibited term (see section 85).

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

carrier has the same meaning as in the *Telecommunications Act 1997*.

cigar means a roll of cut tobacco for smoking that is enclosed in tobacco leaf or the leaf of another plant.

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

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

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conduct rule means subsection (1) of each of the following provisions:

(a) sections 94 to 100;
(b) sections 102 to 105;
(c) sections 108 to 114;
(d) sections 116 to 119.

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

constitutional trade or commerce means trade or commerce:

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

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

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

Note: The Convention is in Australian Treaty Series 2005 No. 7 ([2005] ATS 7) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

Copyright Act means the *Copyright Act 1968*.

Department of Home Affairs means the Department administered by the Minister for Home Affairs.

Designs Act means the *Designs Act 2003*.

e-cigarette: see section 11.

Note: An e-cigarette that contains tobacco is not treated as a tobacco product under this Act (see subsection 9(4)).

e-cigarette accessory: see section 12.

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e-cigarette advertisement: see section 43.

e-cigarette product means an e-cigarette or an e-cigarette accessory.

e-cigarette sponsorship: see section 66.

engage in conduct means:

(a) do an act; or

(b) omit to do an act.

guidance and appeals panel has the same meaning as in the *Administrative Review Tribunal Act 2024*.

guidance and appeals panel application has the same meaning as in the *Administrative Review Tribunal Act 2024*.

health promotion insert has the meaning given by the regulations.

health warning has the meaning given by the regulations.

insert means any thing (other than a tobacco product or the lining of a cigarette pack) placed inside the retail packaging of a tobacco product.

Note: For requirements applying to the lining of a cigarette pack, see the following:

(a) section 74 (about the physical features of the retail packaging of tobacco products);

(b) section 75 (about the colour and finish of the retail packaging of tobacco products).

internet service provider has the same meaning as in the *Online Safety Act 2021*.

ITEC Commissioner means the Illicit Tobacco and E-cigarette Commissioner.

late payment fee: see subsection 174(1).

mandatory marking has the meaning given by the regulations.

mark has a meaning affected by section 15.

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Minister for Home Affairs means the Minister administering the *Australian Border Force Act 2015*.

offer, in relation to the sale or supply of a regulated tobacco item or an e-cigarette product, has a meaning affected by section 16.

onsert means any thing (other than the lining of a cigarette pack) that is affixed or otherwise attached to the retail packaging of a tobacco product.

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

packages: for when a person ***packages*** a tobacco product for retail sale, see section 72.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

Patents Act means the *Patents Act 1990*.

periodical means an issue (however described and however published) of a newspaper, magazine, journal, newsletter or other similar publication, issues of which are published at regular or irregular intervals.

person has a meaning affected by:

(a) section 168 (which deals with partnerships); and
(b) section 169 (which deals with unincorporated associations); and
(c) section 170 (which deals with trusts).

pipe tobacco means a loose tobacco product that is intended for use exclusively in a pipe (other than a water pipe).

Example: Loose processed tobacco that is intended for use in both roll-your-own cigarettes and in a pipe is not ***pipe tobacco***.

Note: Examples of water pipes are hookahs, narghiles, hubble bubbles and bongs.

prohibited ingredient, in relation to a tobacco product, means an ingredient prohibited under subsection 87(1).

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prohibited term, in relation to a brand name or a variant name of a tobacco product: see section 73.

publish:

(a) a tobacco advertisement—see section 30; and

(b) an e-cigarette advertisement—see section 56.

regulated tobacco item means a tobacco product or a tobacco product accessory.

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

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

reporting entity: see section 130.

retail packaging: for ***retail packaging*** of a tobacco product, see section 71.

Secretary means the Secretary of the Department.

shisha tobacco product means a tobacco product that contains molasses as a significant proportion of the product's ingredients.

smoking means smoking tobacco products.

State or Territory enforcement official means a person:

(a) who is appointed, employed or engaged by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(b) who has compliance and enforcement responsibilities in relation to regulated tobacco items.

Therapeutic Goods Act means the *Therapeutic Goods Act 1989* and includes any instruments made under that Act.

this Act includes the regulations made under this Act.

tobacco advertisement: see section 20.

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tobacco product: see section 9.

tobacco product accessory: see section 10.

tobacco product requirement means any of the following requirements in relation to regulated tobacco items:

(a) a requirement specified in Part 3.3;

(b) a requirement prescribed by regulations made under, or for the purposes of, a provision in Part 3.3;

(c) a requirement prescribed by regulations made under, or for the purposes of, subsection 124(1).

tobacco sponsorship: see section 39.

Trade Marks Act means the *Trade Marks Act 1995*.

vaping means inhaling the aerosol or vapour generated or released by an e-cigarette product.

variant name, in relation to a tobacco product, means the name used to distinguish, by reference to one or more characteristics, that kind of tobacco product from other tobacco products supplied under the same brand name.

Note: A variant name must not be or include a prohibited term (see section 85).

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Division 2—Key concepts for this Act

9 Meaning of *tobacco product*

Basic definition

(1) A ***tobacco product*** means the following designed or intended for human consumption or use:

(a) processed tobacco in any form;

(b) a product that contains tobacco as an ingredient.

Note 1: Loose tobacco for roll-your-own cigarettes is an example of processed tobacco. A cigar or cigarette is an example of a product that contains tobacco as an ingredient.

Note 2: An e-cigarette product that contains tobacco is not treated as a tobacco product under this Act (see subsection (4)).

Note 3: Tobacco products and tobacco product accessories are together called ***regulated tobacco items*** (see definition in section 8).

(2) To avoid doubt, a ***tobacco product*** includes those parts of the product that are not tobacco.

Example: A tobacco product that is a cigarette includes the paper, and any filter tip, in the manufactured product.

Certain wrappers excluded

(3) A ***tobacco product*** does not include a wrapper for tobacco that is in the form of a sheet or tube made from or with tobacco.

Note: Such wrappers are treated as tobacco product accessories (see paragraph 10(1)(d)).

E-cigarette products excluded

(4) A ***tobacco product*** does not include an e-cigarette product (even if the e-cigarette product contains tobacco).

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Certain therapeutic goods excluded

(5) A ***tobacco product*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

10 Meaning of *tobacco product accessory*

Basic definition

(1) A ***tobacco product accessory*** means any of the following:

(a) a cigarette paper (including a pre-rolled cigarette paper) that is not part of a tobacco product;

(b) a cigarette roller;

(c) a filter tip for a cigar or cigarette that is not part of a tobacco product;

(d) a wrapper for tobacco that is in the form of a sheet or tube made from or with tobacco;

(e) a card, capsule, bead or other device that is designed or intended to alter the flavour, smell or intensity of a tobacco product (except such a device that is part of a tobacco product);

(f) a pipe designed or intended for smoking pipe tobacco.

Note 1: Tobacco product accessories and tobacco products are together called ***regulated tobacco items*** (see definition in section 8).

Note 2: The wrappers mentioned in paragraph (d) are sometimes called ‘blunts’ or ‘blunt wraps’.

Tobacco product accessories may be prescribed

(2) The regulations may prescribe a kind of item to be a ***tobacco product accessory*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied that the item is designed or intended for use with or for the human consumption or use of tobacco products.

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E-cigarette products excluded

(4) A ***tobacco product accessory*** does not include an e-cigarette product (even if the e-cigarette product contains tobacco).

Certain therapeutic goods excluded

(5) A ***tobacco product accessory*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

11 Meaning of *e-cigarette*

Basic definition

(1) An ***e-cigarette*** means a device (whether or not containing nicotine or tobacco) that generates or releases, or is designed or intended to generate or release, by electronic means, an aerosol or vapour for inhalation by its user in a way that resembles, or produces an experience similar to, smoking.

Note: Examples of e-cigarettes include e-cigars, e-hookah pens, e-pens, e-pipes and vapes.

Devices that resemble toys, food and other objects

(2) A device may be an ***e-cigarette*** even if the device resembles a toy, food, drink, cartoon character, animal, musical instrument, vehicle or household or personal object.

E-cigarettes may be prescribed

(3) The regulations may prescribe a kind of item to be an ***e-cigarette*** for the purposes of this Act.

(4) Before regulations are made under subsection (3), the Minister must be satisfied that it is appropriate to do so.

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Certain therapeutic goods excluded

(5) An ***e-cigarette*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

12 Meaning of *e-cigarette accessory*

Basic definition

(1) An ***e-cigarette accessory*** means any of the following:
  (a) a cartridge, capsule, pod or other vessel that contains, or that is designed or intended to contain, a liquid, gas, aerosol, vapour or other substance for use in an e-cigarette;
  (b) such a liquid, gas, aerosol, vapour or other substance (whether or not containing nicotine or tobacco);
  (c) a heating element designed or intended for use in an e-cigarette;
  (d) a battery specifically designed or intended for use in an e-cigarette.

E-cigarette accessories may be prescribed

(2) The regulations may prescribe a kind of item to be an ***e-cigarette accessory*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied that the item is designed or intended for use with or for the human consumption or use of e-cigarettes.

Certain registered therapeutic goods excluded

(4) An ***e-cigarette accessory*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

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Division 3—Other interpretation provisions

13 References to different kinds of tobacco products

(1) In this Act, tobacco products are of a different kind if they are sold or supplied under:

(a) different brand names; or

(b) different variant names.

(2) If a tobacco product may be consumed or used in more than one way, this Act may treat the product as being of different kinds by reference to the way the product is consumed or used.

Example: Loose processed tobacco that may be used in both roll-your-own cigarettes and in a pipe may be treated as different kinds of tobacco products.

14 References to manufacturers, importers, distributors and retailers

In this Act, a reference to a manufacturer, importer, distributor or retailer of regulated tobacco items or e-cigarette products includes a reference to a person who manufactures, imports, distributes or sells a range of products, only some of which are regulated tobacco items or e-cigarette products.

15 References to *mark*

(1) In this Act, a reference to a ***mark*** includes, without limitation, any line, letter, number, symbol, ideograph, colour, graphic or image.

(2) A ***mark*** includes a trade mark.

16 References to an *offer* to sell or supply

A reference in this Act to an ***offer*** to sell or supply a regulated tobacco item or an e-cigarette product includes (without limitation) a reference to:

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(a) offering the item or product for sale or supply on the internet or from physical premises; and
(b) exposing, displaying or advertising the item or product for sale or supply; and
(c) making the item or product available for sale or supply even if it is not visible to the public.

17 Tobacco products—rebuttable presumption of offer for retail sale

For the purposes of this Act, unless the contrary is proved, a tobacco product is presumed to be offered for retail sale if:

(a) an amount of the tobacco product is on physical premises (whether or not open to the public) from which regulated tobacco items are:
  (i) sold by way of retail sale; or
  (ii) supplied to fulfil a retail sale; and
(b) the amount exceeds the amount (if any) prescribed by regulations made for the purposes of this paragraph.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

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Chapter 2—Advertising and sponsorship prohibitions

Part 2.1—Introduction

18 Simplified outline of this Chapter

This Chapter sets out a general prohibition on advertising and sponsorship for regulated tobacco items and includes equivalent prohibitions for e-cigarette products. A person who contravenes these prohibitions may commit an offence or be liable for a civil penalty. The Therapeutic Goods Act also contains advertising offences and civil penalties in relation to therapeutic goods and vaping goods.

In addition to setting out the general prohibitions, this Chapter defines the following key concepts:

(a) tobacco advertisement;
(b) tobacco sponsorship;
(c) e-cigarette advertisement;
(d) e-cigarette sponsorship.

It also defines how a person publishes an advertisement for the purposes of this Act.

In defining these concepts, this Chapter provides for some exceptions to things that might otherwise be captured. For example, communications that involve government or political matters, or the publication in certain circumstances of material relating to a news or current affairs report, are expressly stated not to be tobacco advertisements or e-cigarette advertisements.

Similarly, there are exceptions as to what constitutes a tobacco or e-cigarette sponsorship, including to permit the making of political donations.

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Section 18

This Chapter also permits the publication of tobacco and e-cigarette advertisements in certain, limited circumstances.

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Part 2.2—Prohibition of tobacco advertisements

Division 1—Offences and civil penalties

19 Prohibition on publishing tobacco advertisements

Publishing a tobacco advertisement

(1) A person contravenes this subsection if:
  (a) the person publishes material, or authorises or causes material to be published; and
  (b) the material is a tobacco advertisement.

Publishing material intended etc. to be a tobacco advertisement

(2) A person contravenes this subsection if:
  (a) the person publishes material, or authorises or causes material to be published; and
  (b) the material is not a tobacco advertisement, but:
    (i) the person intends the material to be a tobacco advertisement; or
    (ii) the person is reckless as to whether the material is a tobacco advertisement.

Note 1: The physical elements of offences against subsections (4) and (7) are set out in subsections (1) and (2) (see section 165).

Note 2: For tobacco advertisement exceptions, see Division 3.

Exception for permitted publications

(3) Subsections (1) and (2) do not apply to the publication of a tobacco advertisement if the publication is permitted by a provision in Division 5.

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

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Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

(5) The fault element for paragraph (1)(b) is recklessness.

Geographical application

(6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

Defence for individual publication

(9) It is a defence in a prosecution for an offence, or in proceedings for a civil penalty, for a contravention of subsection (1) or (2) if the defendant proves that:

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(a) the defendant published the material:
  (i) as an individual; and
  (ii) on the defendant's own initiative; and
(b) the publication was not in the course of, or in any way associated with, the manufacture, importation, distribution or sale of regulated tobacco items by any person; and
(c) the defendant did not receive any direct or indirect benefit (whether financial or not) from any person for publishing the material.

Note: A defendant bears a legal burden in relation to the matters in this subsection in a prosecution for an offence (see section 13.4 of the *Criminal Code*). The same applies in proceedings for a civil penalty.

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Division 2—Meaning of tobacco advertisement

20 Meaning of *tobacco advertisement*

Basic definition

(1) A ***tobacco advertisement*** means any form of communication, recommendation or action that promotes, or is likely to promote, the following (whether directly or indirectly):
  (a) smoking;
  (b) a regulated tobacco item or the use of such an item.

Tobacco advertisements—elements

(2) A tobacco advertisement may comprise any means, or combination of means, of communication, recommendation or action (whether visual, aural or otherwise).

Tobacco advertisements—additional effects

(3) In determining whether material is a tobacco advertisement, disregard whether or not the material promotes matters in addition to the matters mentioned in subsection (1).

Tobacco advertisements—rebuttable presumption

(4) Material that is or contains any of the following is presumed to promote smoking, or a regulated tobacco item or the use of such an item, unless the contrary is proved:
  (a) a trade mark that is registered under the Trade Marks Act in respect of goods that are or include regulated tobacco items;
  (b) a design that is registered under the Designs Act in relation to products that are or include regulated tobacco items;
  (c) a trade mark, design, colour, logo, get-up or work (within the meaning of the Copyright Act) that is evocative of, or closely associated with, a registered trade mark or design that is

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used, or has been used by any person at any time, in relation to regulated tobacco items;

(d) a prohibited term in relation to the brand name or variant name of a tobacco product.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

Tobacco advertisements—names of tobacco manufacturers, importers etc.

(5) Promoting the whole or a part of the name of a person constitutes a tobacco advertisement if:

(a) the person is a manufacturer, importer, distributor or retailer of regulated tobacco items; and

(b) the person's name appears on a tobacco product, or on the retail packaging of a tobacco product.

Note: The use of the name of a person mentioned in this subsection does not constitute a tobacco advertisement in certain circumstances (see Division 3).

Tobacco advertisements may be prescribed

(6) The regulations may prescribe a kind of material to be a ***tobacco advertisement*** for the purposes of this Act.

(7) Before regulations are made under subsection (6), the Minister must be satisfied:

(a) that it is appropriate to do so; and

(b) that making the proposed regulations would not be inconsistent with Division 3 (about exceptions to tobacco advertisements).

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Division 3—Tobacco advertisements—exceptions

21 Exception—labelling and packaging

(1) Marks that appear on a regulated tobacco item, or on the retail packaging of a tobacco product, do not, of themselves, constitute a tobacco advertisement.

(2) Subsection (1) applies only if the regulated tobacco item, or the retail packaging of the tobacco product, complies with the tobacco product requirements (whether in relation to the marks or otherwise).

(3) Despite subsection (1), a communication, recommendation or action in relation to the regulated tobacco item, or the retail packaging of the tobacco product, may constitute a tobacco advertisement.

22 Exception—standard business documents

(1) Marks that appear on a document prepared in the ordinary course of business of a manufacturer, importer, distributor or retailer of regulated tobacco items do not, of themselves, constitute a tobacco advertisement.

Note: Examples of such documents include orders, invoices, statements and documents relating to procurement and employment.

(2) Despite subsection (1), a communication, recommendation or action in relation to the document may constitute a tobacco advertisement.

23 Exception—business signage

(1) Business signage satisfying subsection (2) that appears in, on or near business premises occupied by a manufacturer, importer, distributor or retailer of regulated tobacco items does not, of itself, constitute a tobacco advertisement.

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(2) Business signage satisfies this subsection if it does no more than state one or more of the following:

(a) the name and contact details of the manufacturer, importer, distributor or retailer that occupies the business premises;

(b) the nature of the business;

(c) the location of the business.

(3) Despite subsection (1), a communication, recommendation or action in relation to business signage may constitute a tobacco advertisement.

24 Exception—notice of availability of regulated tobacco items

A statement that regulated tobacco items, or that such items of a particular kind, are available from a manufacturer, importer, distributor or retailer does not, of itself, constitute a tobacco advertisement if the statement does not:

(a) use the brand name or variant name of any particular kind of tobacco product; or

(b) contain anything that would enable a particular regulated tobacco item, or a range of such items, to be identified.

25 Exception—consumer matters

None of the following communications, of themselves, constitute a tobacco advertisement:

(a) recalling a regulated tobacco item;

(b) disclosing a defect in, or a dangerous characteristic of, a regulated tobacco item;

(c) disclosing circumstances in which the use of a regulated tobacco item is or may be dangerous;

(d) disclosing procedures for the appropriate disposal of a regulated tobacco item;

(e) informing people about their consumer rights in relation to regulated tobacco items.

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26 Exception—communications about government or political matters

(1) A communication does not constitute a tobacco advertisement to the extent that it is a communication about government or political matters.

(2) The use in such a communication of the whole name of a manufacturer, importer, distributor or retailer of regulated tobacco items does not, of itself, make the communication constitute a tobacco advertisement.

27 Exception—artistic works and public interest expression

None of the following constitutes a tobacco advertisement:

(a) the performance, exhibition or distribution, in good faith, of an artistic work;

(b) a communication to the extent the communication is made for any genuine academic, educational or scientific purpose or any other genuine purpose in the public interest.

28 Exception—journalism

The publication of material that is or relates to a news report, or a current affairs report, does not constitute a tobacco advertisement if the following conditions are satisfied:

(a) the public interest in the publication of the material outweighs any likely adverse effect of the publication on achieving the objects in paragraphs 3(1)(a) and (b) (about regulated tobacco items);

(b) the publication is made by a person working in a professional capacity as a qualified journalist;

(c) no person receives a benefit of any kind in connection with the publication from:

(i) a manufacturer, importer, distributor or retailer of tobacco products; or

(ii) a related body corporate of such a manufacturer, importer, distributor or retailer.

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29 Exception—disclosures and acknowledgements by authors

Neither of the following statements made by an author of a work published, or intended for publication, in a periodical constitutes a tobacco advertisement:

(a) a statement made in the work to disclose the author's conflict of interest in relation to the work;

(b) a statement made in the work that does no more than acknowledge a contribution made to the author in connection with the preparation of the work.

Note: Part 2.3 prohibits tobacco sponsorships.

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Division 4—Meaning of publish a tobacco advertisement

30 Meaning of *publish* a tobacco advertisement

Basic definition

(1) A person ***publishes*** a tobacco advertisement if the person uses any means of communication to make the material comprising the advertisement, or the material containing the advertisement, available to, or accessible by, the public or a section of the public.

Material included in things sold etc.

(2) Without limiting subsection (1), material is taken to be made available to, or accessible by, the public or a section of the public if the material is included in something sold, or offered for sale or supply, to the public or a section of the public.

Targeted online advertising

(3) Without limiting subsection (1), material is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the material is made available to, or accessible by, a person using the internet; and

(b) the material is made available to that person because of:

(i) the use of an algorithm; or

(ii) the person's online activity; or

(iii) any other characteristic of that person as an internet end user.

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Private events or functions

(4) Without limiting subsection (1), material is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the material is made available to, or accessible by, a person attending a private event or function to which access is restricted; and

(b) the purpose of the event or function is or includes the promotion of:

(i) smoking; or

(ii) a regulated tobacco item or the use of such an item; or

(iii) a manufacturer, importer, distributor or retailer of such an item.

(5) In determining whether material is made available to, or accessible by, the public or a section of the public at a private event or function, disregard whether or not payment or other consideration is received from any person in relation to the event or function.

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Division 5—Tobacco advertisements—permitted publications

31 Permitted publication—physical premises point of sale

Tobacco advertisements complying with State and Territory law

(1) A person may publish a tobacco advertisement if:
  (a) the person displays the tobacco advertisement at physical premises where regulated tobacco items are offered for retail sale; and
  (b) a law of the State or Territory in which the premises are located regulates the advertising of regulated tobacco items; and
  (c) that law contains provisions expressly dealing with the display of advertisements for regulated tobacco items at or on premises where such items are offered for retail sale; and
  (d) the display of the tobacco advertisement complies with those provisions; and
  (e) the tobacco advertisement is not visible from outside the premises.

Particular physical premises

(2) Without limiting subsection (1), each of the following is taken to be physical premises for the purposes of that subsection:
  (a) a kiosk, market stall or other place that has fixed boundaries, whether or not those boundaries have walls, where goods are offered for retail sale;
  (b) a vending machine;
  (c) a motor vehicle.

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32 Permitted publication—online point of sale

Tobacco advertisements complying with State and Territory law

(1) A person may publish a tobacco advertisement if:
  (a) the person makes the advertisement available on, or accessible using, the internet; and
  (b) the advertisement is available to, or accessible by, the public, or a section of the public, in a State or Territory; and
  (c) the advertisement enables a person accessing the advertisement to purchase a regulated tobacco item; and
  (d) the publication of the tobacco advertisement is covered by subsection (2).

(2) The publication of a tobacco advertisement is covered by this subsection if:
  (a) a law of the State or Territory regulates the advertising of regulated tobacco items on the internet; and
  (b) that law contains provisions expressly dealing with the publication of tobacco advertisements on the internet that enable a person accessing the advertisement to purchase a regulated tobacco item; and
  (c) the publication of the advertisement complies with those provisions.

Tobacco advertisements complying with Commonwealth regulations

(3) A person may publish a tobacco advertisement if:
  (a) the person makes the advertisement available on, or accessible using, the internet; and
  (b) the advertisement is available to, or accessible by, the public, or a section of the public, in a State or Territory; and
  (c) the advertisement enables a person accessing the tobacco advertisement to purchase a regulated tobacco item; and

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(d) either:
(i) there is no law of the State or Territory that regulates the advertising of regulated tobacco items on the internet; or
(ii) there is such a law, but it does not contain any provisions expressly dealing with the publication of tobacco advertisements on the internet that enable a person accessing the advertisement to purchase a regulated tobacco item; and
(e) the publication of the advertisement complies with the regulations (if any) made for the purposes of this paragraph.

(4) Regulations made for the purposes of paragraph (3)(e) may, without limitation, prescribe matters in relation to any of the following:
(a) the webpage, or the website, on which tobacco advertisements are displayed;
(b) the size, content, format and location of tobacco advertisements;
(c) without limiting paragraph (b)—the inclusion in or with tobacco advertisements of any of the following:
(i) health warnings;
(ii) messages that are included on health promotion inserts;
(iii) warnings about age restrictions on the retail sale of regulated tobacco items;
(iv) information about any fees, taxes and charges payable in relation to regulated tobacco items;
(d) age restricted access systems for access to tobacco advertisements.

33 Permitted publication—trade communications

(1) A person may publish a tobacco advertisement if the person makes the advertisement available to, or accessible by, a group of people all of whom are involved in the manufacture, importation, distribution or sale of regulated tobacco items.

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(2) Subsection (1) applies only if:

(a) the tobacco advertisement is not available to, or accessible by, persons other than those involved in the manufacture, importation, distribution or sale of regulated tobacco items; and

(b) the advertisement does not, apart from the fact of the advertisement, actively promote smoking or the use of regulated tobacco items; and

(c) in a case where the advertisement relates to the sale or supply of a particular regulated tobacco item—the advertisement is limited to factual information about the item and the terms of the sale or supply of the item.

Note: Factual information about a regulated tobacco item includes the brand or variant name, price, ingredients, availability and package sizing.

34 Permitted publication—telecommunications and online service providers

A person may publish a tobacco advertisement if:

(a) the person is a carrier and, in publishing the tobacco advertisement, the person is acting solely in the person's capacity as a carrier; or

(b) the person is a carriage service provider and, in publishing the tobacco advertisement, the person is acting solely in the person's capacity as a carriage service provider; or

(c) the person is an internet service provider and, in publishing the tobacco advertisement, the person is acting solely in the person's capacity as an internet service provider; or

(d) the person is an Australian hosting service provider and, in publishing the tobacco advertisement, the person is acting solely in the person's capacity as Australian hosting service provider.

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35 Permitted publication—periodicals printed outside Australia

A person may publish a tobacco advertisement if:

(a) the advertisement is contained in a hard copy periodical printed outside Australia; and

(b) the periodical is not principally intended for distribution or use in Australia; and

(c) the conduct constituting publication of the advertisement consists of no more than selling or supplying, or offering to sell or supply, the periodical.

36 Permitted publication—compliance activities

A person may publish a tobacco advertisement if the publication is:

(a) made to comply with a request by, or a requirement of, an authorised officer in relation to administering or enforcing this Act (including exercising any function or power under the Regulatory Powers Act as it applies to this Act); or

(b) authorised or required by any other law of the Commonwealth or any law of a State or Territory.

37 Permitted publication—advertisements during aircraft flight

(1) A person may publish a tobacco advertisement if:

(a) the person is operating the flight of an aircraft; and

(b) the person publishes the advertisement in the aircraft during the flight.

(2) Subsection (1) does not apply if the flight begins at a place in Australia and is intended to end at another place in Australia.

(3) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

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Part 2.3—Prohibition of tobacco sponsorships

Division 1—Offences and civil penalties

38 Prohibition on entering into tobacco sponsorships

Entering into a tobacco sponsorship

(1) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in any of the following conduct:

(i) making a contribution of any kind to another person;

(ii) entering into an arrangement, agreement or understanding with another person to make a contribution of any kind to any person;

(iii) making a promise or giving an undertaking to another person to make a contribution of any kind to any person; and

(b) the conduct constitutes a tobacco sponsorship.

Engaging in conduct intended etc. to be a tobacco sponsorship

(2) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in any of the following conduct:

(i) making a contribution of any kind to another person;

(ii) entering into an arrangement, agreement or understanding with another person to make a contribution of any kind to any person;

(iii) making a promise or giving an undertaking to another person to make a contribution of any kind to any person; and

(b) the conduct does not constitute a tobacco sponsorship, but:

(i) the first person intends the conduct to be a tobacco sponsorship; or

(ii) the first person is reckless as to whether the conduct is a tobacco sponsorship.

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Note: The physical elements of offences against subsections (4) and (7) are set out in subsections (1) and (2) (see section 165).

(3) For the purposes of subsections (1) and (2), it does not matter whether the arrangement, agreement, understanding, promise or undertaking:
  (a) is in writing; or
  (b) is express or implied; or
  (c) is legally binding; or
  (d) is publicly acknowledged.

Fault-based offence

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

Penalty:
  (a) for an individual—2,000 penalty units; and
  (b) for a body corporate—20,000 penalty units.

(5) The fault element for paragraph (1)(b) is recklessness.

Geographical application

(6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

Strict liability offence

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

Penalty:
  (a) for an individual—60 penalty units; and
  (b) for a body corporate—600 penalty units.

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Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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Division 2—Meaning of tobacco sponsorship

39 Meaning of *tobacco sponsorship*

Basic definition

(1) A ***tobacco sponsorship*** means any form of contribution (whether financial or otherwise) to an event, activity or person that promotes, or is likely to promote, the following (whether directly or indirectly):

(a) smoking;

(b) a regulated tobacco item or the use of such an item.

Note: In some circumstances, a tobacco sponsorship may also constitute a tobacco advertisement.

Tobacco sponsorships may be prescribed

(2) The regulations may prescribe a kind of contribution to be a ***tobacco sponsorship*** for the purposes of this Act.

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Division 3—Tobacco sponsorships—exceptions

40 Exception—political donations and electoral expenditure

(1) A contribution of the following kind made to a person or entity covered by subsection (2) does not constitute a tobacco sponsorship:

(a) a gift;

(b) a payment or reimbursement of electoral expenditure incurred during an election period.

(2) This subsection covers the following persons and entities:

(a) a member of the Parliament of the Commonwealth, the Parliament of a State or the Legislative Assembly of a Territory;

(b) a candidate for election to such a Parliament or Legislative Assembly;

(c) a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation;

(d) an entity that is associated with a person or entity mentioned in paragraphs (a) to (c);

(e) another person campaigning for or on behalf of a person or entity mentioned in paragraphs (a) to (c).

(3) Terms used in subsection (1) that are defined in the law dealing with electoral matters (within the ordinary meaning of that expression) of the jurisdiction of the person or entity covered by subsection (2) to whom the contribution is made have the same meaning in subsection (1) as they have in that law.

Example: If a gift is made to a member of the Parliament of New South Wales, and the term ‘gift’ has a defined meaning in the electoral law of that State, then ‘gift’ has the same meaning for the purposes of subsection (1).

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41 Exception—statements by authors

A statement made by an author of a work that is published, or intended for publication, in a periodical to disclose the author's conflict of interest in relation to the work does not constitute a tobacco sponsorship.

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Part 2.4—Prohibition of e-cigarette advertisements

Division 1—Offences and civil penalties

42 Prohibition on publishing e-cigarette advertisements

Publishing an e-cigarette advertisement

(1) A person contravenes this subsection if:
  (a) the person publishes material, or authorises or causes material to be published; and
  (b) the material is an e-cigarette advertisement; and
  (c) any of the following apply:
    (i) the person is a constitutional corporation;
    (ii) the person is a body corporate that is incorporated in a Territory;
    (iii) the publication is made in the course of constitutional trade or commerce;
    (iv) the publication is made using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution;
    (v) the publication is made in a Territory.

Publishing material intended etc. to be an e-cigarette advertisement

(2) A person contravenes this subsection if:
  (a) the person publishes material, or authorises or causes material to be published; and
  (b) the material is not an e-cigarette advertisement, but:
    (i) the person intends the material to be an e-cigarette advertisement; or
    (ii) the person is reckless as to whether the material is an e-cigarette advertisement; and

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(c) any of the following apply:
(i) the person is a constitutional corporation;
(ii) the person is a body corporate that is incorporated in a Territory;
(iii) the publication is made in the course of constitutional trade or commerce;
(iv) the publication is made using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution;
(v) the publication is made in a Territory.

Note 1: The physical elements of offences against subsections (4) and (7) are set out in subsections (1) and (2) (see section 165).

Note 2: For e-cigarette advertisement exceptions, see Division 3.

Exception for permitted publications

(3) Subsections (1) and (2) do not apply to the publication of an e-cigarette advertisement if the publication is permitted by a provision in Division 5.

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

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

(5) For the purposes of subsection (4):
(a) recklessness is the fault element for paragraph (1)(b); and
(b) strict liability applies to paragraphs (1)(c) and (2)(c).

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Geographical application

(6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

Defence for individual publication

(9) It is a defence in a prosecution for an offence, or in proceedings for a civil penalty, for a contravention of subsection (1) or (2) if the defendant proves that:

(a) the defendant published the material:
  (i) as an individual; and
  (ii) on the defendant's own initiative; and
(b) the publication was not in the course of, or in any way associated with, the manufacture, importation, distribution or sale of e-cigarette products by any person; and

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(c) the defendant did not receive any direct or indirect benefit (whether financial or not) from any person for publishing the material.

Note: A defendant bears a legal burden in relation to the matters in this subsection in a prosecution for an offence (see section 13.4 of the *Criminal Code*). The same applies in proceedings for a civil penalty.

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Division 2—Meaning of e-cigarette advertisement

43 Meaning of *e-cigarette advertisement*

Basic definition

(1) An ***e-cigarette advertisement*** means any form of communication, recommendation or action that promotes, or is likely to promote, the following (whether directly or indirectly):
  (a) vaping;
  (b) an e-cigarette product or the use of such a product.

E-cigarette advertisements—elements

(2) An e-cigarette advertisement may comprise any means, or combination of means, of communication, recommendation or action (whether visual, aural or otherwise).

E-cigarette advertisements—additional effects

(3) In determining whether material is an e-cigarette advertisement, disregard whether or not the material promotes matters in addition to the matters mentioned in subsection (1).

E-cigarette advertisements—rebuttable presumption

(4) Material that is or contains any of the following is presumed to promote vaping, or an e-cigarette product or the use of such a product, unless the contrary is proved:
  (a) a trade mark that is registered under the Trade Marks Act in respect of goods that are or include e-cigarette products;
  (b) a design that is registered under the Designs Act in relation to products that are or include e-cigarette products;
  (c) a trade mark, design, colour, logo, get-up or work (within the meaning of the Copyright Act) that is evocative of, or closely associated with, a registered trade mark or design that is

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used, or has been used by any person at any time, in relation to e-cigarette products.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

E-cigarette advertisements—names of e-cigarette manufacturers, importers etc.

(5) Promoting the whole or a part of the name of a person constitutes an e-cigarette advertisement if:

(a) the person is a manufacturer, importer, distributor or retailer of e-cigarette products; and

(b) the person's name appears on an e-cigarette product, or on the wrapping of an e-cigarette product.

Note: The use of the name of a person mentioned in this subsection does not constitute an e-cigarette advertisement in certain circumstances (see Division 3).

E-cigarette advertisements may be prescribed

(6) The regulations may prescribe a kind of material to be an ***e-cigarette advertisement*** for the purposes of this Act.

(7) Before regulations are made under subsection (6), the Minister must be satisfied:

(a) that it is appropriate to do so; and

(b) that making the proposed regulations would not be inconsistent with Division 3 (about exceptions to e-cigarette advertisements).

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Division 3—E-cigarette advertisements—exceptions

44 Exception—labelling and wrapping

(1) Marks that appear on an e-cigarette product, or on the wrapping of an e-cigarette product, do not, of themselves, constitute an e-cigarette advertisement.

(2) Despite subsection (1), a communication, recommendation or action in relation to the e-cigarette product, or the wrapping of the e-cigarette product, may constitute an e-cigarette advertisement.

45 Exception—standard business documents

(1) Marks that appear on a document prepared in the ordinary course of business of a manufacturer, importer, distributor or retailer of e-cigarette products do not, of themselves, constitute an e-cigarette advertisement.

Note: Examples of such documents include orders, invoices, statements and documents relating to procurement and employment.

(2) Despite subsection (1), a communication, recommendation or action in relation to the document may constitute an e-cigarette advertisement.

46 Exception—business signage

(1) Business signage satisfying subsection (2) that appears in, on or near business premises occupied by a manufacturer, importer, distributor or retailer of e-cigarette products does not, of itself, constitute an e-cigarette advertisement.

(2) Business signage satisfies this subsection if it does no more than state one or more of the following:

(a) the name and contact details of the manufacturer, importer, distributor or retailer that occupies the business premises;

(b) the nature of the business;

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(c) the location of the business.

(3) Despite subsection (1), a communication, recommendation or action in relation to business signage may constitute an e-cigarette advertisement.

48 Exception—consumer matters

None of the following communications, of themselves, constitute an e-cigarette advertisement:

(a) recalling an e-cigarette product;

(b) disclosing a defect in, or a dangerous characteristic of, an e-cigarette product;

(c) disclosing circumstances in which the use of an e-cigarette product is or may be dangerous;

(d) disclosing procedures for the appropriate disposal of an e-cigarette product;

(e) informing people about their consumer rights in relation to e-cigarette products.

49 Exception—communications about government or political matters

(1) A communication does not constitute an e-cigarette advertisement to the extent that it is a communication about government or political matters.

(2) The use in such a communication of the whole name of a manufacturer, importer, distributor or retailer of e-cigarette products does not, of itself, make the communication constitute an e-cigarette advertisement.

50 Exception—artistic works and public interest expression

None of the following constitutes an e-cigarette advertisement:

(a) the performance, exhibition or distribution, in good faith, of an artistic work;

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(b) a communication to the extent the communication is made for any genuine academic, educational or scientific purpose or any other genuine purpose in the public interest.

51 Exception—journalism

The publication of material that is or relates to a news report, or a current affairs report, does not constitute an e-cigarette advertisement if the following conditions are satisfied:

(a) the public interest in the publication of the material outweighs any likely adverse effect of the publication on achieving the objects in paragraphs 3(1)(a) (about regulated tobacco items) and (1)(c) (about e-cigarette products);

(b) the publication is made by a person working in a professional capacity as a qualified journalist;

(c) no person receives a benefit of any kind in connection with the publication from:

(i) a manufacturer, importer, distributor or retailer of e-cigarette products; or

(ii) a related body corporate of such a manufacturer, importer, distributor or retailer.

52 Exception—disclosures and acknowledgements by authors

Neither of the following statements made by an author of a work published, or intended for publication, in a periodical constitutes an e-cigarette advertisement:

(a) a statement made in the work to disclose the author's conflict of interest in relation to the work;

(b) a statement made in the work that does no more than acknowledge a contribution made to the author in connection with the preparation of the work.

Note: Part 2.5 prohibits e-cigarette sponsorships.

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53 Exception—exempt advertisements under the Therapeutic Goods Act

(1) An advertisement for an e-cigarette product does not constitute an e-cigarette advertisement if:

(a) the e-cigarette product is a vaping good within the meaning of the Therapeutic Goods Act; and

(b) Part 5-1A of that Act (about regulation of advertising etc. for vaping goods) does not apply to the advertisement because of section 42DZA of that Act.

(2) An advertisement for an e-cigarette product does not constitute an e-cigarette advertisement to the extent that:

(a) the e-cigarette product is a vaping good within the meaning of the Therapeutic Goods Act; and

(b) an authorisation under section 42DZC of that Act is in force in relation to the advertising of that vaping good; and

(c) the advertisement complies with any conditions specified in the authorisation.

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Division 4—Meaning of publish an e-cigarette advertisement

56 Meaning of *publish* an e-cigarette advertisement

Basic definition

(1) A person ***publishes*** an e-cigarette advertisement if the person uses any means of communication to make material comprising the advertisement, or material containing the advertisement, available to, or accessible by, the public or a section of the public.

Material included in things sold etc.

(2) Without limiting subsection (1), material is taken to be made available to, or accessible by, the public or a section of the public if the material is included in something sold, or offered for sale or supply, to the public or a section of the public.

Targeted online advertising

(3) Without limiting subsection (1), material is taken to be made available to, or accessible by, the public or a section of the public if:
  (a) the material is made available to, or accessible by, a person using the internet; and
  (b) the material is made available to that person because of:
    (i) the use of an algorithm; or
    (ii) the person's online activity; or
    (iii) any other characteristic of that person as an internet end user.

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Private events or functions

(4) Without limiting subsection (1), material is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the material is made available to, or accessible by, a person attending a private event or function to which access is restricted; and

(b) the purpose of the event or function is or includes the promotion of:

(i) vaping; or

(ii) an e-cigarette product or the use of such a product; or

(iii) a manufacturer, importer, distributor or retailer of such a product.

(5) In determining whether material is made available to, or accessible by, the public or a section of the public at a private event or function, disregard whether or not payment or other consideration is received from any person in relation to the event or function.

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Division 5—E-cigarette advertisements—permitted publications

60 Permitted publication—telecommunications and online service providers

A person may publish an e-cigarette advertisement if:

(a) the person is a carrier and, in publishing the e-cigarette advertisement, the person is acting solely in the person's capacity as a carrier; or

(b) the person is a carriage service provider and, in publishing the e-cigarette advertisement, the person is acting solely in the person's capacity as a carriage service provider; or

(c) the person is an internet service provider and, in publishing the e-cigarette advertisement, the person is acting solely in the person's capacity as an internet service provider; or

(d) the person is Australian hosting service provider and, in publishing the e-cigarette advertisement, the person is acting solely in the person's capacity as Australian hosting service provider.

61 Permitted publication—periodicals printed outside Australia

A person may publish an e-cigarette advertisement if:

(a) the advertisement is contained in a hard copy periodical printed outside Australia; and

(b) the periodical is not principally intended for distribution or use in Australia; and

(c) the conduct constituting publication of the advertisement consists of no more than selling or supplying, or offering to sell or supply, the periodical.

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62 Permitted publication—compliance activities

A person may publish an e-cigarette advertisement if the publication is:

(a) made to comply with a request by, or a requirement of, an authorised officer in relation to administering or enforcing this Act (including exercising any function or power under the Regulatory Powers Act as it applies to this Act); or

(b) authorised or required by any other law of the Commonwealth or any law of a State or Territory.

63 Permitted publication—advertisements during aircraft flight

(1) A person may publish an e-cigarette advertisement if:

(a) the person is operating the flight of an aircraft; and

(b) the person publishes the advertisement in the aircraft during the flight.

(2) Subsection (1) does not apply if the flight begins at a place in Australia and is intended to end at another place in Australia.

(3) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

64 Interaction of Division with Therapeutic Goods Act

Nothing in this Division constitutes, for the purposes of Part 5-1 or 5-1A of the Therapeutic Goods Act, an authorisation or requirement by a government or government authority to make a reference to an e-cigarette product that is a therapeutic good, or a vaping good, within the meaning of that Act.

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Part 2.5—Prohibition of e-cigarette sponsorships

Division 1—Offences and civil penalties

65 Prohibition on entering into e-cigarette sponsorships

Entering into an e-cigarette sponsorship

(1) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in any of the following conduct:

(i) making a contribution of any kind to another person;

(ii) entering into an arrangement, agreement or understanding with another person to make a contribution of any kind to any person;

(iii) making a promise or giving an undertaking to another person to make a contribution of any kind to any person; and

(b) the conduct constitutes an e-cigarette sponsorship; and

(c) any of the following apply:

(i) the first person is a constitutional corporation;

(ii) the first person is a body corporate that is incorporated in a Territory;

(iii) the conduct takes place in the course of constitutional trade or commerce;

(iv) the conduct takes place in a Territory.

Engaging in conduct intended etc. to be an e-cigarette sponsorship

(2) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in any of the following conduct:

(i) making a contribution of any kind to another person;

(ii) entering into an arrangement, agreement or understanding with another person to make a contribution of any kind to any person;

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(iii) making a promise or giving an undertaking to another person to make a contribution of any kind to any person; and

(b) the conduct does not constitute an e-cigarette sponsorship, but:

(i) the first person intends the conduct to be an e-cigarette sponsorship; or

(ii) the first person is reckless as to whether the contribution is an e-cigarette sponsorship; and

(c) any of the following apply:

(i) the first person is a constitutional corporation;

(ii) the first person is a body corporate that is incorporated in a Territory;

(iii) the conduct takes place in the course of constitutional trade or commerce;

(iv) the conduct takes place in a Territory.

Note: The physical elements of offences against subsections (4) and (7) are set out in subsections (1) and (2) (see section 165).

(3) For the purposes of subsections (1) and (2), it does not matter if the arrangement, agreement, understanding, promise or undertaking:

(a) is in writing; or

(b) is express or implied; or

(c) is legally binding; or

(d) is publicly acknowledged.

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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(5) For the purposes of subsection (4):
  (a) recklessness is the fault element for paragraph (1)(b); and
  (b) strict liability applies to paragraphs (1)(c) and (2)(c).

Geographical application

(6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

Strict liability offence

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

Penalty:
  (a) for an individual—60 penalty units; and
  (b) for a body corporate—600 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty:
  (a) for an individual—2,000 penalty units; and
  (b) for a body corporate—20,000 penalty units.

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Division 2—Meaning of e-cigarette sponsorship

66 Meaning of *e-cigarette sponsorship*

Basic definition

(1) An ***e-cigarette sponsorship*** means any form of contribution (whether financial or otherwise) to an event, activity or person that promotes, or is likely to promote, the following (whether directly or indirectly):

(a) vaping;

(b) an e-cigarette product or the use of such a product.

Note: In some circumstances, an e-cigarette sponsorship may also constitute an e-cigarette advertisement.

E-cigarette sponsorships may be prescribed

(2) The regulations may prescribe a kind of contribution to be an ***e-cigarette sponsorship*** for the purposes of this Act.

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Division 3—E-cigarette sponsorships—exceptions

67 Exception—political donations and electoral expenditure

(1) A contribution of the following kind made to a person or entity covered by subsection (2) does not constitute an e-cigarette sponsorship:

(a) a gift;

(b) a payment or reimbursement of electoral expenditure incurred during an election period.

(2) This subsection covers the following persons and entities:

(a) a member of the Parliament of the Commonwealth, the Parliament of a State or the Legislative Assembly of a Territory;

(b) a candidate for election to such a Parliament or Legislative Assembly;

(c) a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation;

(d) an entity that is associated with a person or entity mentioned in paragraphs (a) to (c);

(e) another person campaigning for or on behalf of a person or entity mentioned in paragraphs (a) to (c).

(3) Terms used in subsection (1) that are defined in the law dealing with electoral matters (within the ordinary meaning of that expression) of the jurisdiction of the person or entity covered by subsection (2) to whom the contribution is made have the same meaning in subsection (1) as they have in that law.

Example: If a gift is made to a member of the Parliament of New South Wales, and the term ‘gift’ has a defined meaning in the electoral law of that State, then ‘gift’ has the same meaning for the purposes of subsection (1).

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68 Exception—statements by authors

A statement made by an author of a work that is published, or intended for publication, in a periodical to disclose the author's conflict of interest in relation to the work does not constitute an e-cigarette sponsorship.

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Part 2.6—Other matters

69 No action for failing to publish prohibited advertisement

No action of any kind lies in any court against a person for refusing or failing to publish a tobacco advertisement or an e-cigarette advertisement if the publication is prohibited by this Act.

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Chapter 3—Tobacco product requirements

Part 3.1—Introduction

70 Simplified outline of this Chapter

This Chapter imposes a variety of requirements in relation to tobacco products and tobacco product accessories. These are called tobacco product requirements, and relate to things such as:

(a) the retail packaging of tobacco products; and

(b) prohibiting the use of certain words or characters in relation to brand names or variant names of tobacco products; and

(c) the appearance and contents of tobacco products; and

(d) the standards that apply to tobacco products.

The requirements in relation to the retail packaging of tobacco products include providing that health warnings must be displayed on the retail packaging, and that there are restrictions on the colour and appearance of the packaging. This Chapter also prohibits tobacco products from containing certain ingredients or devices.

The detail of some of the requirements in this Chapter is set out in the regulations.

A person who contravenes a tobacco product requirement, including by selling or possessing tobacco products that do not comply with such a requirement, may commit an offence or be liable for a civil penalty.

This Chapter also provides that the regulations may prescribe additional tobacco product requirements in relation to some matters.

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Part 3.2—Key concepts—tobacco product requirements

71 Meaning of *retail packaging* of a tobacco product

The ***retail packaging*** of a tobacco product means:

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

(b) any container for retail sale that contains a smaller container in which the tobacco product is directly placed; or

(c) any plastic or other wrapper that covers a container mentioned in paragraph (a) or (b); or

(d) any plastic or other wrapper that covers the tobacco product when the product is offered for retail sale; or

(e) any insert that is placed inside the packaging of the tobacco product mentioned in any of paragraphs (a) to (d); or

(f) any onsert that is affixed or otherwise attached to the packaging of the tobacco product mentioned in any of paragraphs (a) to (d); or

(g) any lining of a container mentioned in paragraph (a).

Note 1: For ***container***, see section 8.

Note 2: For requirements applying to the lining of a cigarette pack, see the following:

(a) section 74 (about the physical features of the retail packaging of tobacco products);

(b) section 75 (about the colour and finish of the retail packaging of tobacco products).

72 Meaning of *packages* a tobacco product for retail sale

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

(a) the person places the tobacco product directly into a container for retail sale; or

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(b) the person places a container, in which the tobacco product has been directly placed, into a larger container for retail sale; or

(c) the person covers the retail packaging of the tobacco product (within the meaning of paragraph (a) or (b) of the definition of ***retail packaging*** in section 71) with a plastic or other wrapper; or

(d) the person covers the tobacco product with a plastic or other wrapper for retail sale; or

(e) the person places an insert inside the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of the definition of ***retail packaging*** in section 71); or

(f) the person affixes or otherwise attaches an onsert to the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of the definition of ***retail packaging*** in section 71); or

(g) the person places a lining in a container mentioned in paragraph (a) in which the tobacco product is or will be directly placed.

Note 1: For ***container***, see section 8.

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

73 Meaning of *prohibited term*

(1) A term listed in column 1 of an item of the following table, examples of which are given in column 2 of the item, is a ***prohibited term*** in relation to a brand name or variant name of a tobacco product.

Prohibited terms—brand names and variant names

Item	Column 1 Prohibited term	Column 2 Examples
1	A term that implies no harm or reduced harm	Low tar, light, lite, mild, ultra-light, ultra-lite

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Prohibited terms—brand names and variant names		
Item	**Column 1** **Prohibited term**	**Column 2** **Examples**
2	A term that refers to, or implies, a positive quality	Cool, extra, fresh, smooth, ultra
3	A colour	Black, blue, gold, red, white
4	A term that refers to a filter	Charcoal filter, firm filter, flo-filter, recessed filter
5	A non-alphabetical character (other than '&'), a numeral (in any form) or an ideograph	!, #, $, two or 2, iii or 3, fifty or L, ☺
6	A term that refers to, or implies, positive health effects	Organic, natural, additive-free
7	A term that suggests the inclusion of a prohibited ingredient	Caffeine, menthol, vitamin

Prohibited terms may be prescribed

(2) The regulations may prescribe a word or mark, in addition to those mentioned in subsection (1), to be a ***prohibited term*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied that the word or mark, if used in a brand name or variant name of a tobacco product, would:

(a) promote or be likely to promote:

(i) smoking; or

(ii) the product or the use of the product; or

(b) promote the product by means that:

(i) are false, misleading or deceptive; or

(ii) are likely to create an erroneous impression about the product's characteristics, health effects, risks or emissions; or

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(c) directly or indirectly create an impression that the product is less harmful than other tobacco products.

(4) The prescription of a word or mark by the regulations as a ***prohibited term*** does not limit subsection (1).

Exception

(5) The name of a person who is a manufacturer, importer, distributor or retailer of regulated tobacco items is not a ***prohibited term***.

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Part 3.3—Tobacco product requirements

Division 1—Plain packaging requirements

74 Plain packaging—physical features

The physical features of the retail packaging of tobacco products must comply with the regulations (if any) prescribed for the purposes of this section.

75 Plain packaging—colour and finish

(1) The colour and finish of the retail packaging of tobacco products must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Default colour for retail packaging

(2) Subsections (3) and (4) apply if the regulations do not prescribe a colour for the following parts of the retail packaging of tobacco products:
  (a) all outer surfaces and inner surfaces of the retail packaging of tobacco products (within the meaning of paragraph (a) or (b) of the definition of ***retail packaging*** in section 71);
  (b) both sides of any lining of a cigarette pack.

(3) Those parts of the retail packaging of the tobacco products must be the colour known as Pantone 448C.

(4) The following are not required to be the colour known as Pantone 448C:
  (a) health warnings;
  (b) mandatory markings;
  (c) the brand name or variant name of the tobacco product;
  (d) any other mark permitted on the retail packaging of the tobacco product under paragraph 77(3)(d).

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76 Plain packaging—standardisation

Standardisation measures

(1) The retail packaging of tobacco products must comply with any requirements prescribed by the regulations as to the following matters:

(a) the number of units, mass or volume of a tobacco product included in the retail packaging of that product;

(b) the pricing of a tobacco product in retail packaging of that number of units, mass or volume.

Exception—shisha tobacco products

(2) This section does not apply to the retail packaging of shisha tobacco products.

77 Plain packaging—prohibited terms and other marks

No prohibited terms on retail packaging

(1) No prohibited term may appear anywhere on the retail packaging of tobacco products.

Note: For ***prohibited term***, see section 73.

No other marks on retail packaging

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

Note 1: For ***mark***, see section 15.

Note 2: This section does not apply to wrappers (see subsection (6)).

Permitted marks

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

(a) health warnings;

(b) mandatory markings;

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(c) the brand name and any variant name (to the extent those names are not a prohibited term) of the tobacco product;

(d) any other mark permitted by regulations (if any) made for the purposes of this paragraph.

Note: For health warnings, see section 78 and for mandatory markings, see section 79.

(4) Any:

(a) brand name or variant name; or

(b) other mark permitted under paragraph (3)(d);

that appears on the retail packaging of tobacco products must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Restrictions

(5) Any brand name, variant name or other mark that is permitted under this Act to appear on the retail packaging of tobacco products must not:

(a) promote the product by means that:

(i) are false, misleading or deceptive; or

(ii) are likely to create an erroneous impression about the product's characteristics, health effects, risks or emissions; or

(b) directly or indirectly create an impression that the product is less harmful than other tobacco products; or

(c) wholly or partly obscure any health warning or mandatory marking; or

(d) constitute a tobacco advertisement; or

(e) provide access to a tobacco advertisement.

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Section not to apply to wrappers

(6) This section does not apply to a plastic or other wrapper that covers:

(a) the retail packaging of a tobacco product; or

(b) a tobacco product that is for retail sale.

Note: For the requirements for wrappers, see section 80.

78 Plain packaging—health warnings

(1) The retail packaging of tobacco products must display the images or combination of images (if any) prescribed by regulations made for the purposes of this subsection.

Chief Medical Officer to recommend health warnings

(2) Before regulations are made under subsection (1), the Commonwealth Chief Medical Officer must have recommended that the images or combination of images be prescribed for the purposes of that subsection.

Commencement of regulations prescribing new health warnings

(3) If:

(a) regulations are made under subsection (1); and

(b) those regulations are not the first such regulations made under that subsection;

the regulations must commence no earlier than 6 months after the day the regulations are made.

(4) Subsection (3) has effect subject to subsection 120A(2).

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79 Plain packaging—mandatory markings

Mandatory markings must appear on retail packaging

(1) The regulations may prescribe markings that must appear on the retail packaging of tobacco products.

(2) Mandatory markings must not, wholly or partly, obscure any health warning on the retail packaging of tobacco products.

Section not to apply to wrappers

(3) This section does not apply to a plastic or other wrapper that covers:

(a) the retail packaging of a tobacco product; or

(b) a tobacco product that is for retail sale.

Note: For the requirements for wrappers, see section 80.

80 Plain packaging—wrappers

A plastic or other wrapper that forms part of the retail packaging of tobacco products must comply with the regulations (if any) made for the purposes of this section.

81 Plain packaging—prohibited tobacco product accessories

The retail packaging of tobacco products must not include a tobacco product accessory unless permitted by regulations (if any) made for the purposes of this section.

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82 Plain packaging—inserts and onserts

(1) The retail packaging of tobacco products (within the meaning of any of paragraphs (a) to (d) of the definition of ***retail packaging*** in section 71):

(a) must include the health promotion inserts, and any other inserts or onserts, prescribed by regulations made for the purposes of this paragraph; and

(b) must not include any other inserts or onserts.

(2) Despite subsection (1), the retail packaging of tobacco products mentioned in that subsection may include any inserts or onserts permitted by regulations (if any) made for the purposes of this subsection.

Chief Medical Officer to recommend health promotion inserts

(3) Before regulations are made under paragraph (1)(a) prescribing health promotion inserts, the Commonwealth Chief Medical Officer must have recommended that the health promotion inserts be prescribed for the purposes of that paragraph.

Commencement of regulations prescribing new health promotion inserts

(4) If:

(a) regulations are made under paragraph (1)(a) prescribing health promotion inserts; and

(b) those regulations are not the first such regulations made under that paragraph;

the regulations must commence no earlier than 6 months after the day the regulations are made.

(5) Subsection (4) has effect subject to subsection 120B(2).

83 Retail packaging not to produce noise or smell

No part of the retail packaging of tobacco products may make a noise, or contain or produce a smell.

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84 Retail packaging must not change after retail sale

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

(a) heat activated inks;

(b) inks or embellishments designed or intended to appear gradually over time;

(c) inks that appear fluorescent in certain light;

(d) panels designed or intended to be scratched or rubbed to reveal an image or text;

(e) removable tabs;

(f) fold-out panels;

(g) any other feature prescribed by regulations made for the purposes of this paragraph.

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Division 2—Naming requirements

85 Prohibited terms—brand names and variant names

A brand name or a variant name of a tobacco product must not be or include a prohibited term.

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Division 3—Appearance, physical features and content requirements

86 Tobacco products—appearance and physical features

Prohibited terms

(1) No prohibited term may appear anywhere on a tobacco product.

Note: For ***prohibited term***, see section 73.

No other marks

(2) No other mark may appear anywhere on a tobacco product, other than as permitted or required by regulations (if any) made for the purposes of this subsection.

Note: For ***mark***, see section 15.

Appearance requirements

(3) The appearance of a tobacco product must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Physical features requirements

(4) The physical features of a tobacco product must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Chief Medical Officer to recommend images or text

(5) Before regulations are made under subsection (3) or (4) that prescribe an image or text to appear on, or form part of, a tobacco product, the Commonwealth Chief Medical Officer must have recommended that the image or text be prescribed for the purposes of that subsection.

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Commencement of regulations prescribing new images or text

(6) If:

(a) regulations are made under subsection (3) or (4) prescribing an image or text; and

(b) those regulations are not the first such regulations made under that subsection;

the regulations must commence no earlier than 6 months after the day the regulations are made.

Note: The requirements of subsections (5) and (6) do not apply to regulations prescribing things other than images or text.

(7) Subsection (6) has effect subject to subsections 120C(2) and 120D(2).

87 Tobacco products—contents

(1) A tobacco product must not contain an ingredient that is prohibited by regulations made for the purposes of this subsection.

Note: Section 131 requires a report about the ingredients used in tobacco products to be given to the Secretary.

(2) Subsection (1) does not apply to a shisha tobacco product insofar as that product contains molasses.

(3) A tobacco product may contain an ingredient that is permitted by regulations made for the purposes of this subsection.

Note: Subject to subsection (1), a tobacco product may contain ingredients in addition to those expressly permitted by the regulations.

88 Tobacco products—prohibited devices

A tobacco product must not contain any device prohibited by regulations made for the purposes of this section.

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Division 4—Tobacco product standards

89 Tobacco products—performance requirements

A tobacco product must comply with the performance requirements (if any) prescribed by regulations made for the purposes of this section.

90 Tobacco products—testing requirements

A tobacco product must comply with the testing requirements (if any) prescribed by regulations made for the purposes of this section.

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Division 5—Tobacco product accessories

91 Tobacco product accessories—prohibited functions

A tobacco product accessory must not alter, or be capable of altering, the flavour or smell of a tobacco product with which it is used.

Note: Examples of tobacco product accessories covered by this section are:

(a) a flavoured filter tip designed or intended for use with roll-your-own tobacco; or

(b) a flavour card designed or intended to infuse a tobacco product with a flavour or smell.

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Part 3.4—General offences and civil penalty provisions—tobacco product requirements

Division 1—Tobacco products not in retail packaging

92 Retail sale of tobacco products without retail packaging

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product by way of retail sale; or

(ii) offers a tobacco product for sale by way of retail sale; and

(b) at the time the product is sold or offered for sale, the product is not in retail packaging.

Note 1: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 165).

Note 2: See section 16 for an extended meaning of ***offer***.

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

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Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

93 Selling or supplying tobacco products to retailers without retail packaging

(1) A person contravenes this subsection if:
(a) the person:
(i) sells a tobacco product; or
(ii) offers a tobacco product for sale; or
(iii) otherwise supplies (whether or not for consideration) a tobacco product;
to another person (the ***retailer***); and
(b) at the time the product is sold, offered for sale or supplied to the retailer, the product is not in retail packaging; and
(c) at that time, the person knows that, or is reckless as to whether, the retailer is ordinarily in the business of selling tobacco products by way of retail sale.

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 16 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

(2) Subsection (1) does not apply if:
(a) the sale, offer or supply is in respect of multiple tobacco products that are cigars; and
(b) the sale or supply is by way of import by the retailer; and

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(c) the person reasonably believes that the retailer intends to package each cigar individually for retail sale as a single cigar.

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

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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Division 2—Non-compliant retail packaging of tobacco products

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

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product; or

(ii) offers a tobacco product for sale; or

(iii) otherwise supplies (whether or not for consideration) a tobacco product; and

(b) at the time the product is sold, offered for sale or supplied, the product is in retail packaging; and

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

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 16 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

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

(a) the sale, offer or supply is in respect of multiple tobacco products that are cigars; and

(b) the sale or supply is to another person (the ***retailer***) who is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(c) the person reasonably believes that the retailer intends to repackage each cigar individually for retail sale as a single cigar.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

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Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

95 Purchasing tobacco products in non-compliant retail packaging

(1) A person contravenes this subsection if:
(a) the person purchases a tobacco product; and
(b) at the time the product is purchased, the product is in retail packaging; and

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars purchased by retailer for individual resale

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

(a) the person purchases multiple tobacco products that are cigars; and

(b) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(c) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—purchase by individual for personal use

(3) Subsection (1) does not apply to an individual who purchases the tobacco product for the individual's personal use.

Exception—purchase in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person purchases the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

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(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraph (1)(b).

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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96 Possessing tobacco products in non-compliant retail packaging

(1) A person contravenes this subsection if:

(a) the person possesses a tobacco product; and

(b) at the time of possession, the product is in retail packaging; and

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars possessed by retailer for individual resale

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

(a) the person possesses multiple tobacco products that are cigars; and

(b) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(c) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—possession by individual for personal use

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

(a) an individual possesses the tobacco product for the individual's personal use; and

(b) the amount of the tobacco product in the individual's possession does not exceed the amount (if any) prescribed by regulations made for the purposes of this paragraph.

Exception—possession in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person possesses the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

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(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraph (1)(b).

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

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Civil penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

97 Packaging tobacco products in non-compliant retail packaging

(1) A person contravenes this subsection if:

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

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Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

98 Manufacturing non-compliant retail packaging of tobacco products

(1) A person contravenes this subsection if:
(a) the person manufactures packaging; and
(b) the packaging is the retail packaging of tobacco products (other than an insert or onsert); and
(c) the retail packaging does not comply with a tobacco product requirement.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

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Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

99 Possessing non-compliant retail packaging of tobacco products

(1) A person contravenes this subsection if:
(a) the person possesses packaging; and
(b) the packaging is the retail packaging of tobacco products (other than an insert or onsert); and
(c) the retail packaging does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—possession by individual

(2) Subsection (1) does not apply if an individual possesses the retail packaging in connection with the individual's personal use of a tobacco product.

Exception—possession in the course of repackaging

(3) Subsection (1) does not apply if, at the time the person possesses the retail packaging of the tobacco products:
(a) the person has repackaged the tobacco products into other retail packaging that complies with the tobacco product requirements for the tobacco products; or

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(b) the person:

(i) possesses other retail packaging that complies with the tobacco product requirements for the tobacco products; and

(ii) intends to repackage the tobacco products into that retail packaging.

Exception—possession in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person possesses the retail packaging for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraph (1)(b).

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Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

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

Note: The physical elements of offences against subsections (3) and (4) are set out in this subsection (see section 165).

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Exception

(2) Subsection (1) does not apply if the manufacturer took all reasonable steps to ensure that the retail packaging complied with the tobacco product requirements.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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Division 3—Non-compliant regulated tobacco items

101 Scope of Division

This Division applies to a contravention of a tobacco product requirement other than a requirement relating to the retail packaging of tobacco products.

Note: Divisions 1 and 2 deal with contraventions relating to the retail packaging of tobacco products.

102 Selling or supplying non-compliant regulated tobacco items

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a regulated tobacco item; or

(ii) offers a regulated tobacco item for sale; or

(iii) otherwise supplies (whether or not for consideration) a regulated tobacco item; and

(b) the item does not comply with a tobacco product requirement.

Note 1: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Note 3: See section 16 for an extended meaning of ***offer***.

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

103 Purchasing non-compliant regulated tobacco items

(1) A person contravenes this subsection if:
(a) the person purchases a regulated tobacco item; and
(b) at the time the item is purchased, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (5) are set out in this subsection (see section 165).

Exception—purchase by individual for personal use

(2) Subsection (1) does not apply to an individual who purchases the regulated tobacco item for the individual's personal use.

Exception—purchase in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person purchases the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

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(a) an authorised officer;
(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);
(c) a member of the police force or police service of a State or Territory;
(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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104 Possessing non-compliant regulated tobacco items

(1) A person contravenes this subsection if:

(a) the person possesses a regulated tobacco item; and

(b) at the time of possession, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (5) are set out in this subsection (see section 165).

Exception—possession by individual for personal use

(2) Subsection (1) does not apply to an individual who possesses the regulated tobacco item for the individual's personal use.

Exception—possession in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person possesses the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

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Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

105 Manufacturing non-compliant regulated tobacco items

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

Note 1: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

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Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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Part 3.5—Offences and civil penalty provisions relating to constitutional corporations—tobacco product requirements

Division 1—Tobacco products not in retail packaging

106 Retail sale of tobacco products without retail packaging to a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product by way of retail sale; or

(ii) offers a tobacco product for sale by way of retail sale;

to another person; and

(b) that other person is a constitutional corporation; and

(c) at the time the product is sold or offered for sale, the product is not in retail packaging.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: See section 16 for an extended meaning of ***offer***.

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

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Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

107 Selling or supplying tobacco products without retail packaging to retailer who is a constitutional corporation

(1) A person contravenes this subsection if:
(a) the person:
(i) sells a tobacco product; or
(ii) offers a tobacco product for sale; or
(iii) otherwise supplies (whether or not for consideration) a tobacco product;
to another person (the ***retailer***); and
(b) the retailer is a constitutional corporation; and
(c) at the time the product is sold, offered for sale or supplied to the retailer, the product is not in retail packaging; and
(d) at that time, the person knows that, or is reckless as to whether, the retailer is ordinarily in the business of selling tobacco products by way of retail sale.

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 16 for an extended meaning of ***offer***.

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Exception—cigars sold or supplied to retailer for individual resale

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

(a) the sale, offer or supply is in respect of multiple tobacco products that are cigars; and

(b) the sale or supply is by way of import by the retailer; and

(c) the person reasonably believes that the retailer intends to package each cigar individually for retail sale as a single cigar.

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

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

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Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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Division 2—Non-compliant retail packaging of tobacco products

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

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product; or

(ii) offers a tobacco product for sale; or

(iii) otherwise supplies (whether or not for consideration) a tobacco product;

to another person (the ***retailer***); and

(b) the retailer is a constitutional corporation; and

(c) at the time the product is sold, offered for sale, or supplied to the retailer, the product is in retail packaging; and

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

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 16 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

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

(a) the sale, offer or supply is in respect of multiple tobacco products that are cigars; and

(b) the retailer is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

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(c) the person reasonably believes that the retailer intends to repackage each cigar individually for retail sale as a single cigar.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

(1) A person contravenes this subsection if:
  (a) the person purchases a tobacco product from another person; and
  (b) that other person is a constitutional corporation; and
  (c) at the time the product is purchased, the product is in retail packaging; and
  (d) the retail packaging does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars purchased by retailer for individual resale

(2) Subsection (1) does not apply if:
  (a) the person purchases multiple tobacco products that are cigars; and
  (b) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and
  (c) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—purchase by individual for personal use

(3) Subsection (1) does not apply to an individual who purchases the tobacco product for the individual's personal use.

Exception—purchase in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person purchases the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:
  (a) an authorised officer;

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(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraphs (1)(b) and (c).

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

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Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

110 Possessing tobacco products in non-compliant retail packaging obtained from a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person possesses a tobacco product; and

(b) the person obtained possession of the product from a constitutional corporation; and

(c) at the time of possession, the product is in retail packaging; and

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars possessed by retailer for individual resale

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

(a) the person possesses multiple tobacco products that are cigars; and

(b) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(c) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—possession by individual for personal use

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

(a) an individual possesses the tobacco product for the individual's personal use; and

(b) the amount of the tobacco product in the individual's possession does not exceed the amount (if any) prescribed by regulations made for the purposes of this paragraph.

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Exception—possession in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person possesses the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraphs (1)(b) and (c).

Strict liability offence

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

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Penalty:

(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

(1) A person contravenes this subsection if:

(a) the person packages a tobacco product; and
(b) the product is packaged for retail sale; and
(c) the product is packaged under a contract with a constitutional corporation; and
(d) the retail packaging does not comply with a tobacco product requirement.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

(1) A person contravenes this subsection if:
(a) the person manufactures packaging; and
(b) the packaging is retail packaging of tobacco products (other than an insert or onsert); and
(c) the retail packaging is manufactured under a contract with a constitutional corporation; and
(d) the retail packaging does not comply with a tobacco product requirement.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

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Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

113 Possessing non-compliant retail packaging of tobacco products obtained from a constitutional corporation

(1) A person contravenes this subsection if:
(a) the person possesses packaging; and
(b) the packaging is retail packaging of tobacco products (other than an insert or onsert); and

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(c) the person obtained possession of the retail packaging from a constitutional corporation; and

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—possession by individual

(2) Subsection (1) does not apply if an individual possesses the retail packaging in connection with the individual's personal use of a tobacco product.

Exception—possession in the course of repackaging

(3) Subsection (1) does not apply if, at the time the person possesses the retail packaging of the tobacco products:

(a) the person has repackaged the tobacco products into other retail packaging that complies with the tobacco product requirements for the tobacco products; or

(b) the person:

(i) possesses other retail packaging that complies with the tobacco product requirements for the tobacco products; and

(ii) intends to repackage the tobacco products into that retail packaging.

Exception—possession in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person possesses the retail packaging for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

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(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to this subsection in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraphs (1)(b) and (c).

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

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Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

114 Manufacturing tobacco products that are packaged in non-compliant retail packaging by a constitutional corporation

(1) A person contravenes this subsection if:
(a) the person (the ***manufacturer***) manufactures a tobacco product; and
(b) the manufacturer enters into a contract or arrangement, or arrives at an understanding, for another person to package the tobacco product for retail sale; and
(c) that other person is a constitutional corporation; and
(d) the tobacco product is packaged for retail sale by the other person; and
(e) the retail packaging does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Exception

(2) Subsection (1) does not apply if the manufacturer took all reasonable steps to ensure that the retail packaging complied with the tobacco product requirements.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

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Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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Division 3—Non-compliant regulated tobacco items

115 Scope of Division

This Division applies to a contravention of a tobacco product requirement other than a requirement relating to the retail packaging of tobacco products.

Note: Divisions 1 and 2 deal with contraventions relating to the retail packaging of tobacco products.

116 Selling or supplying non-compliant regulated tobacco items to a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a regulated tobacco item; or

(ii) offers a regulated tobacco item for sale; or

(iii) otherwise supplies (whether or not for consideration) a regulated tobacco item;

to another person; and

(b) that other person is a constitutional corporation; and

(c) the item does not comply with a tobacco product requirement.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Note 3: See section 16 for an extended meaning of ***offer***.

Fault-based offence

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

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Penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

117 Purchasing non-compliant regulated tobacco items from a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person purchases a regulated tobacco item from another person; and
(b) that other person is a constitutional corporation; and
(c) at the time the product is purchased, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

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Exception—purchase by individual for personal use

(2) Subsection (1) does not apply to an individual who purchases the regulated tobacco item for the individual's personal use.

Exception—purchase in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person purchases the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

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Strict liability offence

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

Penalty:
(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

118 Possessing non-compliant regulated tobacco items obtained from a constitutional corporation

(1) A person contravenes this subsection if:
(a) the person possesses a regulated tobacco item; and
(b) the person obtained possession of the item from a constitutional corporation; and
(c) at the time of possession, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—possession by individual for personal use

(2) Subsection (1) does not apply to an individual who possesses the regulated tobacco item for the individual's personal use.

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Exception—possession in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person possesses the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a State or Territory enforcement official.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

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

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(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

119 Manufacturing non-compliant regulated tobacco items under a contract with a constitutional corporation

(1) A person contravenes this subsection if:
(a) the person manufactures a regulated tobacco item under a contract with another person; and
(b) that other person is a constitutional corporation; and
(c) the item does not comply with a tobacco product requirement.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault-based offence

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

Penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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

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Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and
(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

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Part 3.6—Miscellaneous

Division 1—Export exception

120 Export exception for non-compliant retail packaging or regulated tobacco items

(1) This section applies in relation to each conduct rule.

Export exception

(2) The conduct rule does not apply to a person (the ***relevant person***) if:

(a) the relevant person engages in conduct that would (apart from this section) contravene the conduct rule in relation to a regulated tobacco item; and

(b) subsection (3) is satisfied in relation to the item.

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

Export conditions

(3) This subsection is satisfied in relation to a regulated tobacco item if:

(a) a contract or arrangement has been entered into, or an understanding has been reached, with another person for the item to be exported (whether or not the relevant person is a party to that contract, arrangement or understanding); and

(b) the relevant person engages in the conduct in the course of, or for the purposes of, the item being exported; and

(c) in a case where the relevant person sells or supplies the item, or offers to sell or supply the item—the sale or supply is not, or would not be, a retail sale; and

(d) in a case where the relevant person purchases the item—the relevant person does not purchase the item in the course of a retail sale.

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Division 1A—Phasing-in and phasing-out of health warnings, health promotion inserts and appearance and physical features

120A Phasing-in and phasing-out of health warnings

(1) If:

(a) provisions (the ***existing provisions***) of regulations prescribing images or a combination of images (if any) are in force for the purposes of subsection 78(1); and

(b) later regulations are made that contain provisions (the ***new provisions***) amending the existing provisions;

then the later regulations may contain provisions (the ***phasing-in provisions***) that provide that a prescribed conduct rule, to the extent that it relates to subsection 78(1), does not apply to prescribed conduct engaged in:

(c) by persons in relation to a tobacco product if the retail packaging of that product displays the images or combination of images (if any) that will be prescribed for the purposes of subsection 78(1) on the day on which the new provisions commence; and

(d) during one or more prescribed periods.

(2) Subsection 78(3) does not apply to the phasing-in provisions of the later regulations.

Note: Subsection 78(3) applies to the new provisions of the later regulations.

(3) This section does not limit the application, saving or transitional provisions that may be made by the later regulations in relation to the new provisions.

Note: For example, the later regulations may contain application provisions relating to the phasing out of the current health warnings on the retail packaging of tobacco products.

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Section 120B

120B Phasing-in and phasing-out of health promotion inserts

(1) If:

(a) provisions (the ***existing provisions***) of regulations prescribing health promotion inserts are in force for the purposes of paragraph 82(1)(a); and

(b) later regulations are made that contain provisions (the ***new provisions***) amending the existing provisions;

then the later regulations may contain provisions (the ***phasing-in provisions***) that provide that a prescribed conduct rule, to the extent that it relates to paragraph 82(1)(a) and health promotion inserts, does not apply to prescribed conduct engaged in:

(c) by persons in relation to a tobacco product if the retail packaging, referred to in subsection 82(1), of that product includes the health promotion inserts that will be prescribed for the purposes of paragraph 82(1)(a) on the day on which the new provisions commence; and

(d) during one or more prescribed periods.

(2) Subsection 82(4) does not apply to the phasing-in provisions of the later regulations.

Note: Subsection 82(4) applies to the new provisions of the later regulations.

(3) This section does not limit the application, saving or transitional provisions that may be made by the later regulations in relation to the new provisions.

Note: For example, the later regulations may contain application provisions relating to the phasing out of the current health promotion inserts on the retail packaging of tobacco products.

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120C Phasing-in and phasing-out of appearance requirements

(1) If:

(a) provisions (the ***existing provisions***) of regulations prescribing an image or text are in force for the purposes of subsection 86(3); and

(b) later regulations are made that contain provisions (the ***new provisions***) amending the existing provisions;

then the later regulations may contain provisions (the ***phasing-in provisions***) that provide that a prescribed conduct rule, to the extent that it relates to subsection 86(3) and images or text, does not apply to prescribed conduct engaged in:

(c) by persons in relation to a tobacco product if the appearance of that product complies with the requirements, relating to images or text, that will be prescribed for the purposes of subsection 86(3) on the day on which the new provisions commence; and

(d) during one or more prescribed periods.

(2) Subsection 86(6) does not apply to the phasing-in provisions of the later regulations.

Note: Subsection 86(6) applies to the new provisions of the later regulations.

(3) This section does not limit the application, saving or transitional provisions that may be made by the later regulations in relation to the new provisions.

Note: For example, the later regulations may contain application provisions relating to the phasing out of the current appearance requirements of a tobacco product.

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Section 120D

120D Phasing-in and phasing-out of physical features requirements

(1) If:

(a) provisions (the ***existing provisions***) of regulations prescribing an image or text are in force for the purposes of subsection 86(4); and

(b) later regulations are made that contain provisions (the ***new provisions***) amending the existing provisions;

then the later regulations may contain provisions (the ***phasing-in provisions***) that provide that a prescribed conduct rule, to the extent that it relates to subsection 86(4) and images or text, does not apply to prescribed conduct engaged in:

(c) by persons in relation to a tobacco product if the physical features of that product comply with the requirements, relating to images or text, that will be prescribed for the purposes of subsection 86(4) on the day on which the new provisions commence; and

(d) during one or more prescribed periods.

(2) Subsection 86(6) does not apply to the phasing-in provisions of the later regulations.

Note: Subsection 86(6) applies to the new provisions of the later regulations.

(3) This section does not limit the application, saving or transitional provisions that may be made by the later regulations in relation to the new provisions.

Note: For example, the later regulations may contain application provisions relating to the phasing out of the current physical features requirements of a tobacco product.

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Division 2—Interaction with certain intellectual property laws

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

Effect on use requirements under Trade Marks Act

(1) For the purposes of the Trade Marks Act and regulations made under that Act, an applicant for the registration of a trade mark in respect of a regulated tobacco item is taken to intend to:

(a) use the trade mark in Australia in relation to that item; or

(b) authorise another person to use the trade mark in Australia in relation to that item; or

(c) assign the trade mark to a body corporate that is about to be constituted with a view to the body corporate using the trade mark in Australia in relation to that item;

if the applicant would intend to do so but for the operation of this Act.

(2) To avoid doubt, for the purposes of paragraph 42(b) of the Trade Marks Act, this Act does not have the effect that the use of a trade mark in relation to a regulated tobacco item would be contrary to law.

Effect on registration under Trade Marks Act

(3) Neither:

(a) the operation of this Act; nor

(b) the circumstance that a person is prevented, by or under this Act, from using a trade mark on or in relation to regulated tobacco items, or on or in relation to the retail packaging of tobacco products;

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are circumstances that make it reasonable or appropriate:

(c) not to register the trade mark; or

(d) to revoke the acceptance of an application for registration of the trade mark; or

(e) to register the trade mark subject to conditions or limitations; or

(f) to revoke the registration of the trade mark.

(4) To avoid doubt, subsection (3) applies for the purposes of:

(a) sections 38 and 84A of the Trade Marks Act; and

(b) any power of the Registrar of Trade Marks under the regulations made under that Act:

(i) to revoke the acceptance of an international registration designating Australia (within the meaning of those regulations); or

(ii) to amend or cease protection of a protected international trade mark (within the meaning of those regulations).

Proceedings relating to opposed applications

(5) For the purposes of paragraph 100(1)(c) of the Trade Marks Act, an opponent is taken to have rebutted an allegation if the opponent establishes that, but for the operation of this Act, the registered owner would have used the trade mark in Australia:

(a) on or in relation to regulated tobacco items; or

(b) on or in relation to the retail packaging of tobacco products.

Trade Marks regulations applying provisions of Trade Marks Act

(6) Subsections (1) to (5) of this section also apply in relation to regulations made under the Trade Marks Act that apply provisions of the Trade Marks Act that are affected by this section, including where the regulations apply those provisions in modified form.

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122 Effect on the Designs Act of failure to make products as a result of this Act

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

(a) under section 90 of the Designs Act, requiring the grant of a licence in relation to the design; or

(b) under section 92 of that Act, revoking the registration of the design.

123 Effect on the Patents Act of compliance with this Act

(1) To avoid doubt, this Act does not have the effect that the use of an invention that is or relates to a regulated tobacco item would be contrary to law for the purposes of the following provisions of the Patents Act:

(a) paragraph 50(1)(a);

(b) paragraph 101B(2)(d);

(c) subparagraph 101E(1)(a)(iv).

(2) A failure to exploit (within the meaning of the Patents Act) a patented invention merely as a result of complying with the requirements of this Act does not, of itself, constitute an unsatisfactory failure to exploit the patent for the purposes of paragraph 133(3)(d) of the Patents Act.

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Division 3—Additional tobacco product requirements

124 Regulations may prescribe additional requirements

(1) The regulations may prescribe additional requirements in relation to any of the following:

(a) the retail packaging of tobacco products;

(b) the content of tobacco products;

(c) tobacco product accessories;

(d) standards for tobacco products.

(2) Part 3.3 does not limit subsection (1).

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Chapter 4—Permanent bans on certain tobacco products

Part 4.1—Introduction

125 Simplified outline of this Chapter

This Chapter imposes a permanent ban on chewing tobacco and snuffs intended for oral use.

A person who contravenes this ban by dealing in, or possessing, such a product may commit an offence or be liable for a civil penalty.

126 Tobacco products that are permanently banned

The following tobacco products are permanently banned under this Act:

(a) chewing tobacco;

(b) snuffs intended for oral use.

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Part 4.2—Offences and civil penalty provisions

127 Dealing in permanently banned tobacco products

(1) A person contravenes this subsection if:

(a) the person engages in conduct; and

(b) the conduct is:

(i) the importation or manufacture of; or

(ii) the sale or supply of, or the offer to sell or supply;

a tobacco product; and

(c) at the time the person engages in the conduct, the tobacco product is permanently banned under this Act; and

(d) any of the following apply:

(i) the person is a constitutional corporation;

(ii) the person is a body corporate that is incorporated in a Territory;

(iii) the conduct occurs in the course of constitutional trade or commerce;

(iv) the conduct occurs in a Territory.

Note: The physical elements of offences against subsections (4) and (7) are set out in this subsection (see section 165).

Exception—importation for personal use

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

(a) the person who engages in the conduct is an individual; and

(b) the conduct is the importation of the tobacco product for personal use by the individual; and

(c) another law of the Commonwealth permits the importation of the tobacco product; and

(d) the amount of the tobacco product does not exceed the limit (if any) on the importation of such a product prescribed by that other law.

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Exception—sale or supply by way of export

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

(a) the conduct engaged in by the person is the sale or supply of, or an offer to sell or supply, the tobacco product by way of export; and

(b) the sale or supply is not, or would not be, a retail sale.

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

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(5) For the purposes of subsection (4), strict liability applies to paragraphs (1)(c) and (d).

Geographical application

(6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

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Civil penalty provision

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

Civil penalty:
(a) for an individual—2,000 penalty units; and
(b) for a body corporate—20,000 penalty units.

128 Possessing permanently banned tobacco products

(1) A person contravenes this subsection if:
(a) the person possesses a tobacco product; and
(b) at the time of possession, the tobacco product is permanently banned under this Act; and
(c) any of the following apply:
(i) the person is a constitutional corporation;
(ii) the person is a body corporate that is incorporated in a Territory;
(iii) the person possesses the tobacco product in or for the purposes of constitutional trade or commerce;
(iv) the person possesses the tobacco product in a Territory.

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—possession for personal use

(2) Subsection (1) does not apply if:
(a) the person who possesses the tobacco product is an individual; and
(b) the possession of the tobacco product is for personal use by the individual; and
(c) the tobacco product was imported in compliance with another law of the Commonwealth.

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Exception—sale or supply by way of export

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

(a) the possession of the tobacco product is for the purpose of:

(i) the sale or supply of; or

(ii) an offer to sell or supply;

the tobacco product by way of export; and

(b) the sale or supply is not, or would not be, a retail sale.

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

Fault-based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

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

(b) for a body corporate—600 penalty units.

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Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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Chapter 5—Reporting and information disclosure

Part 5.1—Introduction

129 Simplified outline of this Chapter

This Chapter requires certain manufacturers and importers of tobacco products (collectively known as reporting entities) to give to the Secretary the following reports for each financial year:

(a) a report identifying the ingredients used in manufacturing tobacco products;

(b) a report providing information relating to the volume of tobacco products imported into, or sold or supplied in, Australia;

(c) a report providing information about the entity's marketing and promotional expenditure.

A reporting entity may consolidate reports into a single report that covers the same financial year. Related reporting entities may also combine reports into a single report, either on their own initiative or as directed by the Secretary.

The Minister must publish each report given by a reporting entity under this Chapter unless the Minister is satisfied that it is not appropriate to do so. However, the Minister must not publish trade secrets or information that has a commercial value that would be, or could be, destroyed if the information were disclosed.

A reporting entity that contravenes a reporting requirement may commit an offence or be liable for a civil penalty. The Minister may also decide to publish information about the non-compliance, including the identity of the reporting entity.

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130 Meaning of *reporting entity*

(1) Each of the following persons is a ***reporting entity***:

(a) a person who is a manufacturer of tobacco products that are sold or supplied, or offered for sale or supply, in Australia;

(b) a person who is an importer of tobacco products that are sold or supplied, or offered for sale or supply, in Australia.

Note: The meaning of ***person*** is affected by sections 168 (partnerships), 169 (unincorporated associations) and 170 (trusts).

Reporting entities may be prescribed

(2) The regulations may prescribe a person to be a ***reporting entity*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied that the person proposed to be prescribed is involved in the sale or supply (other than as a retailer) of tobacco products in Australia.

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Part 5.2—Reports

Division 1—Required reports

131 Tobacco product ingredients

(1) A reporting entity must give to the Secretary a report that identifies the ingredients (other than processing aids) used in manufacturing each kind of tobacco product sold or supplied, or offered for sale or supply, by the entity in Australia during each financial year.

Note: The ingredients of a cigarette include the paper, and any filter tip, used in manufacturing the cigarette (see subsection 9(2)).

(2) The report must be given to the Secretary within 30 days after the end of the financial year.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

Contents of report

(3) The report must identify the following for each kind of tobacco product:

(a) the brand name and variant name (if any) of the product;

(b) the common, chemical and trade name of each ingredient;

(c) the purpose for which the ingredient is used;

(d) the amount of the ingredient used in the product.

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132 Tobacco product volumes

(1) A reporting entity must give to the Secretary a report that includes the information mentioned in subsection (3) for each kind of tobacco product sold or supplied, or offered for sale or supply, by the entity in Australia during each financial year.

(2) The report must be given to the Secretary within 30 days after the end of the financial year.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

Contents of report

(3) For the purposes of subsection (1), the information is the following:

(a) if the reporting entity is an importer—the total number of units imported by the reporting entity;

(b) if the reporting entity is an importer—the total mass, in kilograms, imported by the reporting entity;

(c) the total number of units sold or supplied by the reporting entity;

(d) the total mass, in kilograms, sold or supplied by the reporting entity;

(e) the total Australian dollar value of sales revenue, including excise duty;

(f) the total number of units destroyed by the reporting entity;

(g) the total mass, in kilograms, destroyed by the reporting entity.

133 Marketing and promotional expenditure

(1) A reporting entity must give to the Secretary a report that contains information about the activities mentioned in subsection (3) (to the extent they are not prohibited by this Act) conducted by the entity during each financial year.

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(2) The report must be given to the Secretary within 30 days after the end of the financial year.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

Contents of report

(3) For the purposes of subsection (1), the activities are the following:

(a) marketing, promotion and sponsorship (such as corporate hospitality functions);

(b) corporate social responsibility activities;

(c) developing and designing retail packaging for tobacco products;

(d) contributions of a kind mentioned in subsection 40(1);

(e) lobbying;

(f) services or funding provided to any industry group or organisation that seeks to influence the development of public policy relating to tobacco control;

(g) philanthropy;

(h) rebates and reward systems offered to distributors and retailers of tobacco products;

(i) arrangements entered into with social media influencers.

Note: For paragraph (d), the contributions mentioned in subsection 40(1) are political donations and electoral expenditure.

(4) The report must include for each activity mentioned in subsection (3):

(a) a description of the activity; and

(b) the expenditure on the activity during the financial year; and

(c) the kind of tobacco product (if any) in relation to which the activity was undertaken.

134 Determinations by Secretary

(1) The Secretary may, by notifiable instrument, determine that the obligation to provide one or more reports under this Part does not

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apply to a specified reporting entity. The determination may be subject to conditions.

(2) The Secretary must not:

(a) revoke a determination under subsection (1); or

(b) vary such a determination by amending or including conditions to which the determination is subject;

unless the Secretary has notified the entity, in writing, that the Secretary is considering revoking or varying the determination.

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Division 2—General matters relating to reports

135 Scope of Division

This Division applies in relation to reports required to be given under this Chapter.

136 How reports must be given

(1) A report must be given in a form and manner (if any) approved in an instrument under subsection (2).

(2) The Secretary may, by notifiable instrument, approve a form or manner for the purposes of subsection (1).

137 Contents of reports

Signature and certification of report

(1) A report must:
  (a) be signed on behalf of the reporting entity by a director or other officer (both within the meaning of the *Corporations Act 2001*) of the entity; and
  (b) declare that the information contained in the report is true and correct to the best of the director's or officer's knowledge; and
  (c) state that a copy of the report will be given to the entity's governing body.

Contents of report—basic details

(2) A report must include the following:
  (a) the name of the reporting entity;
  (b) if the reporting entity has an ABN—the ABN;
  (c) a description of the entity's main business activities;
  (d) a statement of the financial year to which the report relates;

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(e) the date the report was signed;

(f) if the entity is a related body corporate in relation to another body corporate that is itself a reporting entity—the name of the other body corporate and a description of the relationship.

Note: For ***related body corporate***, see section 8.

138 Consolidated reports

(1) A reporting entity may provide a single report (the ***consolidated report***) that contains 2 or more reports required to be given by the reporting entity under this Chapter.

(2) The reports in the consolidated report must each cover the same financial year.

(3) The consolidated report must:

(a) separately identify each of the reports required by Division 1; and

(b) satisfy subsection 137(1) in relation to each report.

Direction by Secretary

(4) The Secretary may, by notifiable instrument, direct a reporting entity to provide reports in the form of a consolidated report.

139 Reporting by related entities

Scope

(1) This section applies if 2 or more reporting entities are related bodies corporate.

Note: For ***related body corporate***, see section 8.

Group reports

(2) The reporting entities may combine the reports required to be given by the entities under this Chapter into a single report (the ***group report***).

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(3) The group report must:
(a) state the reporting entities that are covered by the report; and
(b) describe how those entities are related bodies corporate; and
(c) separately identify each report given by each entity; and
(d) satisfy subsection 137(1) in relation to each report contained in the group report.

140 Direction by Secretary

The Secretary may, by notifiable instrument, direct 2 or more reporting entities who are related bodies corporate to provide reports in the form of a group report under section 139.

Note: For ***related body corporate***, see section 8.

141 No duplication of information

(1) A report given by a reporting entity must not duplicate the information given in a report by another reporting entity to which the first entity is a related body corporate.

Note: For ***related body corporate***, see section 8.

(2) Subsection (1) applies whether or not the reporting entities submit a group report under section 139.

142 Extensions of time

Applications for further time

(1) A reporting entity may apply, in writing, to the Secretary for an extension to the period in which to give a report.

(2) The application must be made before the end of the period for giving the report.

(3) The period for giving the report is extended until:
(a) if the Secretary extends the period for giving the report—the end of that extended period; or

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(b) if the Secretary refuses to extend the period for giving the report—the day that is 7 days after written notice of the Secretary's decision is given to the reporting entity.

Form and manner of application

(4) The application must be made in a form and manner (if any) approved in an instrument under subsection (5).

(5) The Secretary may, by notifiable instrument, approve a form or manner for the purposes of subsection (4).

Contents of application

(6) The application must:
(a) state the extension sought to the period; and
(b) state the circumstances that have resulted in the need for the extension; and
(c) include evidence of those circumstances; and
(d) include any other information prescribed by regulations made for the purposes of this paragraph.

Decision to extend period

(7) The Secretary may, by written notice to the entity, extend the period for giving the report if, after considering:
(a) the application; and
(b) any matters prescribed by regulations made for the purposes of this paragraph;
the Secretary is satisfied that:
(c) the circumstances that have resulted in the need for an extension of time are exceptional; or
(d) those circumstances were outside the entity's reasonable control.

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(8) An extension to the period must be for such time as the Secretary considers appropriate, having regard to:
  (a) the nature of the circumstances that have resulted in the need for further time; and
  (b) the strength of the evidence included in the application.

(9) The Secretary may impose any condition that the Secretary considers appropriate on the extension.

Review by Administrative Review Tribunal

(10) Applications may be made to the Administrative Review Tribunal for review of a decision by the Secretary to:
  (a) refuse to grant further time; or
  (b) grant a shorter period of time than that sought in the application; or
  (c) impose a condition on the grant of further time.

143 Secretary may request additional information

(1) The Secretary may, by written notice to a reporting entity, request the entity to provide specified information about, or in relation to, a matter that is mentioned in a report given by the entity.

(2) The request must:
  (a) be in writing; and
  (b) specify the period in which the information is to be given.

(3) The reporting entity must comply with the request before the end of:
  (a) the period specified in the request; or
  (b) any longer period allowed by the Secretary.

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144 Regulations may prescribe additional requirements

The regulations may prescribe the following:

(a) details about the information to be included in a report under this Chapter;

(b) additional kinds of information that are to be included in a report under this Chapter.

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Division 3—Publication and disclosure

145 Publication of reports and information

Minister to publish reports

(1) Subject to subsections (2) and (3), the Minister must publish, in such manner as the Minister considers appropriate, each report given by a reporting entity under Division 1.

(2) The Minister may decide not to publish a report, or part of a report, if the Minister is satisfied that it is not appropriate to do so, having regard to the matters (if any) prescribed by regulations made for the purposes of this subsection.

Restrictions on publication

(3) The Minister must not publish information in a report (the ***reported information***) under this section if the reported information is:
  (a) a trade secret of the reporting entity; or
  (b) other information of the reporting entity that has a commercial value that would be, or could reasonably be expected to be, destroyed if the reported information were publicly disclosed.

(4) Subsection (3) does not apply to reported information that is:
  (a) already in the public domain; or
  (b) required to be disclosed under another law of the Commonwealth, or under a law of a State or Territory; or
  (c) readily discoverable.

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146 Disclosure for research, policy development or data analysis

Scope

(1) This section applies to the following information (the ***reported information***):

(a) a report, or part of a report, that the Minister decides not to publish under subsection 145(2);

(b) information that is not published under subsection 145(3).

Disclosure for limited purposes

(2) The Secretary may disclose the reported information to another person or body for the purposes of the person or body undertaking research, policy development or data analysis to assist the Department with:

(a) the administration of this Act; or

(b) achieving the objects in paragraphs 3(1)(a) and (b) (about regulated tobacco items).

(3) The Secretary must not disclose reported information under subsection (2) to:

(a) another person who is not employed or engaged by the Commonwealth or by a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or

(b) a body that is not such a Commonwealth entity;

unless:

(c) the other person or body has undertaken not to use or further disclose the reported information except in accordance with a written agreement that:

(i) is in force between the Commonwealth and that person or body; and

(ii) applies in relation to the reported information; and

(d) the Secretary is satisfied that the reported information will be used or further disclosed only in accordance with the agreement.

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147 Publication of information about failure to comply with Chapter

(1) If the Minister is reasonably satisfied that a reporting entity has failed to comply with this Chapter, the Minister may decide to publish the following information (the ***non-compliance information***):

(a) the identity of the entity;

(b) the details of the non-compliance;

in any way the Minister considers appropriate.

(2) Before publishing the non-compliance information, the Minister must give the reporting entity written notice of the decision and the reasons for the decision.

(3) After the Minister gives the reporting entity notice of the decision, the Minister may publish the non-compliance information unless, within 10 business days after the reporting entity is given notice of the decision, the reporting entity:

(a) makes an application under subsection (4) for review of the decision; and

(b) gives the Minister a copy of that application.

Review by Administrative Review Tribunal

(4) Applications may be made to the Administrative Review Tribunal for review of a decision by the Minister under subsection (1) to publish non-compliance information.

(5) If a reporting entity makes such an application, the Minister may publish the non-compliance information only if:

(a) the reporting entity withdraws the application for review of the Minister's decision; or

(b) the Administrative Review Tribunal dismisses the application for review of the Minister's decision; or

(c) the Administrative Review Tribunal makes a decision (the ***Tribunal decision***) to affirm or vary the Minister's decision and any of the following applies:

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(i) the reporting entity makes a referral application in relation to the Tribunal decision and the President of the Tribunal refuses the application;

(ii) the reporting entity makes a referral application in relation to the Tribunal decision and withdraws the application;

(iii) the reporting entity does not make a referral application in relation to the Tribunal decision within the period specified in section 125 of the *Administrative Review Tribunal Act 2024*;

(iv) no referral application may be made in relation to the Tribunal decision;

(v) the guidance and appeals panel application taken to be made because the Tribunal decision is referred to the guidance and appeals panel is withdrawn or dismissed; or

(d) all of the following apply:

(i) the Administrative Review Tribunal makes a decision (the ***Tribunal decision***) on review of the Minister's decision;

(ii) the Tribunal makes a decision (the ***GAP decision***) on the guidance and appeals panel application taken to have been made because the Tribunal decision is referred to the guidance and appeals panel;

(iii) the effect of the GAP decision is to publish the non-compliance information.

Definitions

(6) In this section:

referral application means an application made under section 123 of the *Administrative Review Tribunal Act 2024* to refer a decision of the Administrative Review Tribunal to the guidance and appeals panel.

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Part 5.3—Offence and civil penalty provision

148 Non-compliance with reporting obligations

(1) A person contravenes this subsection if:
  (a) the person is a reporting entity; and
  (b) the person is required, under this Chapter, to give the Secretary:
    (i) a report; or
    (ii) additional information about a matter in a report; and
  (c) the person does not give the report or information in accordance with this Chapter.

Note: The physical elements of offences against subsections (2) and (5) are set out in this subsection (see section 165).

Fault-based offence

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

Penalty: 20 penalty units.

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

Offences—extended geographical jurisdiction

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (2).

Strict liability offence

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

Penalty: 10 penalty units.

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Civil penalty provision

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

Civil penalty: 20 penalty units.

Continuing offences and continuing contraventions of civil penalty provision

(7) The maximum penalty for each day that an offence under subsection (2) or (5) continues is 10% of the maximum penalty that can be imposed in respect of the offence.

Note: Subsections (2) and (5) are continuing offences under section 4K of the *Crimes Act 1914*.

(8) The maximum civil penalty for each day that a contravention of subsection (6) continues is 10% of the maximum civil penalty that can be imposed in respect of a contravention of that subsection.

Note: Subsection (6) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

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Chapter 6—Compliance and enforcement

Part 6.1—Introduction

149 Simplified outline of this Chapter

This Chapter deals with compliance and enforcement.

Compliance and enforcement activities are primarily undertaken by persons appointed by the Secretary as authorised officers for the purposes of this Act.

Authorised officers may do any of the following:

(a) require a person to give information or documents, or to attend and answer questions, relevant to the administration or enforcement of this Act;
(b) enter premises under a warrant or with the consent of the occupier;
(c) exercise monitoring powers under Part 2 of the Regulatory Powers Act;
(d) exercise investigation powers under Part 3 of the Regulatory Powers Act.

Authorised officers also have certain other functions and powers under the Regulatory Powers Act.

The Regulatory Powers Act also sets out the mechanisms for enforcing civil penalty provisions, issuing infringement notices, accepting enforceable undertakings and obtaining injunctions.

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Part 6.2—Authorised officers

Division 1—Appointment

150 Appointment of authorised officers

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

(a) a person who is an APS employee;

(b) a person who is appointed or engaged (otherwise than under the *Public Service Act 1999*) by:

(i) the Commonwealth; or

(ii) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);

(c) a person:

(i) who is appointed, employed or engaged by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning control of regulated tobacco items, e-cigarette products or both.

(2) The Secretary must not appoint a person as an authorised officer unless the Secretary is satisfied that the person has suitable qualifications, training or experience to properly perform the functions, or exercise the powers, of an authorised officer.

(3) The Secretary may appoint a person mentioned in paragraph (1)(c) as an authorised officer only with the agreement of the State or Territory concerned.

(4) An authorised officer is appointed for the period specified in the instrument of appointment.

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

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Division 2—Powers

151 Power to require persons to give information or produce documents

Scope

(1) This section applies if an authorised officer believes on reasonable grounds that a person has information or a document that is relevant to the administration or enforcement of this Act.

Powers of authorised officer

(2) The authorised officer may, by written notice given to the person, require the person:
  (a) to give any such information to a specified authorised officer within the period specified in the notice; or
  (b) to produce any such document to a specified authorised officer within the period specified in the notice.

Notice requirements

(3) The period specified in the notice must be at least 14 days after the notice is given to the person.

(4) The notice may specify the manner in which the person is required to comply with the notice.

(5) The notice must state the effect of the following provisions:
  (a) subsections (6) and (7);
  (b) section 137.1 of the *Criminal Code* (about giving false or misleading information);
  (c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

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Offence

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

Penalty: 60 penalty units.

Civil penalty provision

(7) A person is liable to a civil penalty if:
(a) the person is given a notice under subsection (2); and
(b) the person fails to comply with the notice.

Civil penalty: 60 penalty units.

152 Power to require person to attend and answer questions

Scope

(1) This section applies if an authorised officer believes on reasonable grounds that a person has information that is relevant to the administration or enforcement of this Act.

Power of authorised officer

(2) The authorised officer may, by written notice given to the person:
(a) require the person to appear before a specified authorised officer to answer questions; and
(b) specify a time and place at which the person is to appear.

(3) The notice must state the effect of subsections (7) and (8).

Oral or written answers

(4) A person who attends before an authorised officer may be required by the authorised officer to answer questions orally or in writing.

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Oath or affirmation

(5) The authorised officer may question the person on oath or affirmation and for that purpose may:
  (a) require the person to take an oath or make an affirmation; and
  (b) administer the oath or affirmation to the person.

(6) The oath or affirmation to be taken or made by the person is an oath or affirmation that the statements that the person will make will be true to the best of the person's knowledge or belief.

Offence

(7) A person commits an offence if:
  (a) the person is given a notice under subsection (2); and
  (b) the person:
    (i) refuses or fails to attend before the specified authorised officer; or
    (ii) attends before the specified authorised officer, but refuses or fails to take an oath or make an affirmation; or
    (iii) attends before the specified authorised officer, but refuses or fails to answer a question put by, or on behalf of, that officer.

Penalty: 60 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if:
  (a) the person is given a notice under subsection (2); and
  (b) the person:
    (i) refuses or fails to attend before the specified authorised officer; or
    (ii) attends before the specified authorised officer, but refuses or fails to take an oath or make an affirmation; or

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(iii) attends before the specified authorised officer, but refuses or fails to answer a question put by, or on behalf of, that officer.

Civil penalty: 60 penalty units.

153 Self-incrimination and self-exposure

Abrogation of privilege against self-incrimination

(1) An individual is not excused from giving information, producing a document or answering a question under subsection 151(2) or 152(2) on the ground that giving the information, producing the document or answering the question might tend to incriminate the individual in relation to an offence.

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

(2) However:

(a) the information given, document produced or the answer given; and

(b) the giving of the information, the production of the document or the answering of the question; and

(c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information, the production of the document or the answering of the question;

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

(d) subsection 151(6) or 152(7) of this Act; or

(e) section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) in relation to giving the information, producing the document or answering the question; or

(f) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) in relation to giving the information, producing the document or answering the question.

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Abrogation of privilege against self-exposure to penalty

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information, producing a document or answering a question under subsection 151(2) or 152(2), the individual is not excused from giving the information, producing the document or answering the question under that provision on that ground.

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

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Part 6.3—Monitoring and investigation powers

Division 1—Monitoring powers

154 Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

(a) an offence against this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

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

(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), there are no related provisions.

Authorised applicant and authorised person

(4) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised

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person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

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

Relevant chief executive

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

Relevant court

(7) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
  (a) the Federal Court of Australia;
  (b) the Federal Circuit and Family Court of Australia (Division 2);
  (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional monitoring powers

(8) For the purposes of Part 2 of the Regulatory Powers Act, the powers mentioned in subsection (9) are taken to be additional monitoring powers for the purposes of determining:
  (a) whether a provision mentioned in subsection (1) has been, or is being, complied with; or
  (b) the correctness of the information mentioned in subsection (2).

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(9) The additional monitoring powers are:
  (a) the power to sample any thing on premises entered under Part 2 of the Regulatory Powers Act; and
  (b) the power to remove and test such samples.

Use of force in executing a warrant

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

Person assisting

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

Self-incrimination etc.

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

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

(13) However:
  (a) the answer given or document produced; and

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(b) the answering of the question or the production of the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

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

(d) section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or

(e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

(14) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 24(3) of the Regulatory Powers Act, as Part 2 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

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

Extension to external Territories

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

155 Consent and identification by authorised officers not required in certain circumstances

Scope

(1) This section applies if:

(a) an authorised officer enters the public area of business premises when they are open to the public; and

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(b) the officer's entry is not made under a monitoring warrant issued under section 32 of the Regulatory Powers Act, as that section applies in relation to this Act; and

(c) the occupier of the premises has not consented to the entry; and

(d) the officer's entry is solely for the purpose of exercising monitoring powers (within the meaning of the Regulatory Powers Act) in relation to a provision that is subject to monitoring under Part 2 of that Act by doing any one or more of the following:

(i) inspecting the retail packaging of tobacco products;

(ii) purchasing regulated tobacco items;

(iii) observing practices relating to the retail sale of regulated tobacco items.

No requirement to obtain consent or show identity card

(2) Despite paragraph 18(2)(a) and section 25 of the Regulatory Powers Act, the authorised officer is not required to:

(a) obtain the consent of the occupier of the premises to the officer's entry; or

(b) show the occupier of the premises the officer's identity card after entering the premises.

Other rights and obligations unaffected

(3) Nothing in this section affects:

(a) the right of an occupier of premises to refuse to allow the authorised officer to enter, or remain, on the premises; or

(b) the obligations of the authorised officer under the Regulatory Powers Act, as it applies in relation to this Act, concerning the exercise of monitoring powers other than those mentioned in subparagraphs (1)(d)(i) to (iii).

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Division 2—Investigation powers

156 Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

(a) an offence against this Act; or

(b) a civil penalty provision of this Act; or

(c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

Related provisions

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

Authorised applicant and authorised person

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

Issuing officer

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

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Relevant chief executive

(5) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

Relevant court

(6) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
  (a) the Federal Court of Australia;
  (b) the Federal Circuit and Family Court of Australia (Division 2);
  (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional investigation powers

(7) The additional powers mentioned in subsection (8) are taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1).

(8) The additional investigation powers are:
  (a) the power to sample any thing on premises entered under Part 3 of the Regulatory Powers Act; and
  (b) the power to remove and test such samples.

Use of force in executing a warrant

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

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Person assisting

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

Self-incrimination etc.

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

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

(12) However:

(a) the answer given or document produced; and

(b) the answering of the question or the production of the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

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

(d) section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or

(e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

(13) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 54(3) of the Regulatory

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Powers Act, as Part 3 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

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

Extension to external Territories

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

157 Forfeiture of seized regulated tobacco items

Scope

(1) This section applies if:
  (a) regulated tobacco items (the ***seized items***) are seized under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 156(1); and
  (b) the seized items do not comply with a tobacco product requirement.

Forfeiture notices

(2) An authorised officer may, within 14 days after seizure of the seized items, give a written notice (a ***forfeiture notice***) to:
  (a) the owner of the items; or
  (b) if the owner of the items cannot be identified after reasonable inquiry—the person from whom the items were seized.

(3) Subsection (2) does not apply if:
  (a) the owner of the seized items cannot be identified after reasonable inquiries; and
  (b) the items were not seized from a person.

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(4) The forfeiture notice must:
  (a) identify the seized items; and
  (b) state the date on which the items were seized; and
  (c) state the tobacco product requirement or requirements with which the items do not comply; and
  (d) state that the owner may agree to the forfeiture of the items; and
  (e) explain the procedure for the possible return of the items in subsections (5) to (7); and
  (f) state that, unless the items are returned to the owner by order of a magistrate under subsection (7), they are forfeited to the Commonwealth by operation of subsection (8).

Owner may apply to magistrate for return of seized items

(5) The owner may apply to a magistrate for an order that the seized items are to be returned to the owner.

(6) The application must be made:
  (a) within 30 days after the forfeiture notice was given; or
  (b) if no forfeiture notice was given because of subsection (3)—within 30 days after seizure of the seized items.

(7) If the magistrate is satisfied that the seized items do not contravene any tobacco product requirement, the magistrate must order that the items are to be returned to the owner. Otherwise, the magistrate must refuse to make the order.

Forfeiture of seized items to the Commonwealth

(8) The seized items are forfeited to the Commonwealth if:
  (a) the owner of the seized items agrees to their forfeiture; or
  (b) no application is made to a magistrate under subsection (5) within the required time period; or
  (c) an application made to a magistrate under subsection (5) is refused.

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(9) The Secretary may retain, destroy, dispose of or otherwise deal with forfeited seized items as the Secretary sees fit.

158 Recovery of costs in relation to seized items

Scope

(1) This section applies if:

(a) regulated tobacco items (the ***seized items***) are seized under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 156(1); and

(b) a person has been convicted of an offence, or found to have contravened a civil penalty provision, under Part 3.4 or 3.5 of this Act in relation to the seized items.

Recovery of costs

(2) The person is liable to pay to the Commonwealth an amount equal to the costs reasonably incurred by the Commonwealth in seizing, retaining, destroying or otherwise dealing with the seized items.

(3) An amount payable by a person under subsection (2):

(a) is a debt due by the person to the Commonwealth; and

(b) may be recovered by action in a court of competent jurisdiction.

159 Modifications of Part 3 of the Regulatory Powers Act

Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 156(1) of this Act as if a reference in paragraphs 66(1)(c) and 67(1)(a) of the Regulatory Powers Act to 60 days were a reference to 90 days.

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

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Part 6.4—Enforcing compliance with this Act

Division 1—Civil penalty provisions

160 Civil penalty provisions

Enforceable civil penalty provisions

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

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

Authorised applicant

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

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

(a) the Federal Court of Australia;

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

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

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

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Liability of Crown

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

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Division 2—Infringement notices

161 Infringement notices

Provisions subject to an infringement notice

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

Infringement officer

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

Relevant chief executive

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

Extension to external Territories

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

Liability of Crown

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

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Division 3—Enforceable undertakings

162 Enforceable undertakings

Enforceable provisions

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

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

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
  (a) the Federal Court of Australia;
  (b) the Federal Circuit and Family Court of Australia (Division 2);
  (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

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

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Division 4—Injunctions

163 Injunctions

Enforceable provisions

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

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

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
  (a) the Federal Court of Australia;
  (b) the Federal Circuit and Family Court of Australia (Division 2);
  (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

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

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Chapter 6A—Illicit Tobacco and E-cigarette Commissioner

Part 6A.1—Introduction

163A Simplified outline of this Chapter

This Chapter establishes the Illicit Tobacco and E-cigarette Commissioner, within the Australian Border Force which is part of the Department of Home Affairs.

The Illicit Tobacco and E-cigarette Commissioner has the following functions:

(a) supporting the development and implementation of national strategies for the enforcement of illicit tobacco and e-cigarette product laws;

(b) advising on the development of new laws and strategies relating to the trade in illicit tobacco and e-cigarette products;

(c) providing administrative and governance support for any intergovernmental responses to the trade in illicit tobacco and e-cigarette products in Australia;

(d) preparing and publishing reports;

(e) other functions as are conferred on the Commissioner by a law of the Commonwealth;

(f) anything incidental or conducive to the performance of any of the above functions.

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Part 6A.2—Illicit Tobacco and E-cigarette Commissioner

163B Illicit Tobacco and E-cigarette Commissioner

(1) There is to be an Illicit Tobacco and E-cigarette Commissioner.

(2) The Illicit Tobacco and E-cigarette Commissioner sits within that part of the Department of Home Affairs known as the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*).

163C Functions of the ITEC Commissioner

The ITEC Commissioner has the following functions:

(a) supporting the development and implementation of national strategies for the enforcement of illicit tobacco and e-cigarette product laws;

(b) advising on the development of new laws and strategies relating to the trade in illicit tobacco and e-cigarette products;

(c) providing administrative and governance support for any intergovernmental responses to the trade in illicit tobacco and e-cigarette products in Australia;

(d) the reporting functions described in section 163D;

(e) such other functions as are conferred on the ITEC Commissioner by the regulations, this Act or any other law of the Commonwealth;

(f) to do anything incidental or conducive to the performance of any of the above functions.

163D Reporting functions

(1) The ITEC Commissioner has the reporting functions described in this section.

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Law enforcement reports

(2) As soon as practicable after the end of each reporting period starting on or after the day this section commences, the ITEC Commissioner must prepare reports on the prevalence and consequences of the illicit tobacco and e-cigarette trade in Australia.

(3) As soon as practicable after the completion of a report prepared for the purposes of subsection (2), the report must be:
  (a) published on a website maintained by the Department of Home Affairs; and
  (b) given to the Minister for Home Affairs.

(4) The ITEC Commissioner must be satisfied that a report prepared for the purposes of subsection (2) was prepared in collaboration with such Commonwealth, State and Territory agencies as the ITEC Commissioner considers appropriate.

Excise and customs duty reports

(5) As soon as practicable after the end of each reporting period starting on or after the day this section commences, the ITEC Commissioner must prepare reports on the estimated amount of evaded tobacco excise and customs duty resulting from the illicit tobacco and e-cigarette trade in Australia.

(6) Without limiting subsection (5), a report prepared for the purposes of that subsection must include:
  (a) estimates of the amount of imported and domestically produced illicit tobacco and e-cigarette products in Australia; and
  (b) a comparison of the estimated amount of evaded tobacco excise and customs duty resulting from the illicit tobacco and e-cigarette trade in Australia, and the amount of excise and customs duty collected as a result of the legal trade in tobacco and e-cigarette products in Australia.

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(7) As soon as practicable after the completion of a report prepared for the purposes of subsection (5), the report must be:
  (a) published on a website maintained by the Department of Home Affairs; and
  (b) given to the Minister for Home Affairs.

(8) The ITEC Commissioner must be satisfied that a report prepared for the purposes of subsection (5) was prepared in collaboration with the Australian Taxation Office.

Enforcement statistics reports

(9) As soon as practicable after the end of each reporting period starting on or after the day this section commences, the ITEC Commissioner must prepare reports on enforcement statistics, and analysis of those statistics, relating to the illicit tobacco and e-cigarette trade in Australia, including detections and seizures of illicit tobacco and e-cigarette products, and associated arrests.

(10) As soon as practicable after the completion of a report prepared for the purposes of subsection (9), the report must be:
  (a) published on a website maintained by the Department of Home Affairs; and
  (b) given to the Minister for Home Affairs.

(11) The ITEC Commissioner must be satisfied that a report prepared for the purposes of subsection (9) was prepared in collaboration with the Australian Crime Commission.

Tabling

(12) The Minister for Home Affairs must cause a report given to the Minister under this section to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

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Definitions

(13) In this section:

reporting period means a period of 12 months starting on 1 July.

163E Application of finance law

For the purposes of paragraph (a) of the definition of ***Department of State*** in section 8 of the *Public Governance, Performance and Accountability Act 2013*, the ITEC Commissioner is prescribed in relation to the Department of Home Affairs.

Note: This means that the Commissioner is an official of the Department of Home Affairs for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

163F Arrangements relating to staff of the Department of Home Affairs

(1) The staff assisting the ITEC Commissioner are to be APS employees in that part of the Department of Home Affairs known as the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*) whose services are made available to the ITEC Commissioner by the Secretary of the Department of Home Affairs, in connection with the performance of any of the ITEC Commissioner's functions.

(2) When performing services for the ITEC Commissioner, the persons are subject to the directions of the ITEC Commissioner.

163G Other persons assisting the ITEC Commissioner

(1) The ITEC Commissioner may also be assisted by employees of Agencies (within the meaning of the *Public Service Act 1999*) whose services are made available to the ITEC Commissioner in connection with the performance of any of the ITEC Commissioner's functions.

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(2) The ITEC Commissioner may, on behalf of the Commonwealth, make an arrangement with the appropriate authority or officer of:

(a) a State or Territory government; or

(b) a State or Territory government authority;

under which the government or authority makes officers or employees available to the ITEC Commissioner to perform services in connection with the performance of any of the ITEC Commissioner's functions.

(3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person to whom the arrangement related.

(4) When performing services for the ITEC Commissioner under this section, a person is subject to the directions of the ITEC Commissioner.

163H Delegation by the ITEC Commissioner

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

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the ITEC Commissioner.

163J Ministerial directions

(1) The Minister for Home Affairs may give the ITEC Commissioner directions about the way in which the Commissioner is to carry out any of the functions of the Commissioner.

(2) However, the Minister for Home Affairs must not give directions about the content of any advice that may be given by the ITEC Commissioner.

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(3) A direction under subsection (1) must be in writing.

(4) The ITEC Commissioner must comply with a direction under subsection (1).

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

(6) The Minister for Home Affairs must cause a copy of each direction given under subsection (1) to be tabled in each House of the Parliament as soon as practicable after giving the direction.

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Part 6A.3—Administration

163K Appointment of the ITEC Commissioner

(1) The ITEC Commissioner is to be appointed by the Minister for Home Affairs by written instrument, on a full-time basis.

Note: The ITEC Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901.*

(2) The ITEC Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

163L Acting appointments

The Minister for Home Affairs may, by written instrument, appoint a person to act as ITEC Commissioner:

(a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or

(b) during any period when the Commissioner:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

163M Remuneration

(1) The ITEC Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the regulations.

(2) The ITEC Commissioner is to be paid the allowances that are prescribed by the regulations.

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

163N Leave of absence

(1) The ITEC Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister for Home Affairs may grant the ITEC Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

163P Engaging in other paid work

The ITEC Commissioner must not engage in paid work outside the duties of the Commissioner's office without the approval of the Minister for Home Affairs.

163Q Other terms and conditions of appointment

The ITEC Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act, that are determined by the Minister for Home Affairs.

163R Resignation of appointment

(1) The ITEC Commissioner may resign the Commissioner's appointment by giving the Minister for Home Affairs a written resignation.

(2) The resignation takes effect on the day it is received by the Minister for Home Affairs or, if a later day is specified in the resignation, on that later day.

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163S Termination of appointment

(1) The Minister for Home Affairs may terminate the appointment of the ITEC Commissioner:
  (a) for misbehaviour; or
  (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.

(2) The Minister for Home Affairs may terminate the appointment of the ITEC Commissioner if:
  (a) the Commissioner:
    (i) becomes bankrupt; or
    (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    (iii) compounds with the Commissioner's creditors; or
    (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors; or
  (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  (c) the Commissioner engages, except with the Minister's approval, in paid work outside the duties of the Commissioner's office; or
  (d) the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

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Chapter 7—Miscellaneous

Part 7.1—Introduction

164 Simplified outline of this Chapter

This Chapter deals with various miscellaneous matters, including in relation to the following:

(a) general rules about offences and civil penalty provisions;

(b) the treatment of partnerships, unincorporated associations and trusts;

(c) cost recovery;

(d) the constitutional basis for this Act.

This Chapter also provides for the Minister and Secretary to delegate their functions and powers, and includes a power to make regulations. Before certain regulations are made, the Minister must be satisfied that the regulations will advance relevant objects of this Act.

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Part 7.2—General rules about offences and civil penalty provisions

Division 1—Interpretation

165 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.

166 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.

167 Offences against this Act—extended meaning

In this Act, a reference to an offence against this Act includes an offence against Chapter 7 of the *Criminal Code* (about the proper administration of Government) that relates to this Act.

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Division 2—Partnerships, unincorporated associations and trusts

168 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 who, at the time the offence was committed:

(a) engaged in the relevant conduct; or

(b) aided, abetted, counselled or procured the relevant conduct; or

(c) was in any way knowingly concerned in, or party to, the relevant conduct (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.

169 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 unincorporated association by this Act is imposed on each member

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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 unincorporated association is taken to have been committed by each member of the association's committee of management who, at the time the offence was committed:

(a) engaged in the relevant conduct; or

(b) aided, abetted, counselled or procured the relevant conduct; or

(c) was in any way knowingly concerned in, or party to, the relevant conduct (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.

170 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.

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

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(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 who, at the time the offence was committed:

(i) engaged in the relevant conduct; or

(ii) aided, abetted, counselled or procured the relevant conduct; or

(iii) was in any way knowingly concerned in, or party to, the relevant conduct (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.

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Part 7.3—Cost recovery

171 Fees for fee-bearing activities

(1) The regulations may prescribe fees that may be charged in relation to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

(2) Without limiting subsection (1), the regulations may do any of the following:

(a) prescribe 2 or more fees for the same matter;

(b) prescribe a method for working out a fee;

(c) prescribe the circumstances in which a person is exempt from paying a specified fee;

(d) prescribe the circumstances in which the Secretary may waive a fee;

(e) prescribe the circumstances in which a fee may be refunded, in whole or in part;

(f) prescribe a method for working out the refund of part of a fee.

(3) Without limiting subsection (1), the regulations may 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.

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

172 Paying fees

The regulations may prescribe the time when a specified fee is due and payable.

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173 Person liable to pay fees

The regulations may prescribe one or more persons who are liable to pay a specified fee.

174 Late payment fee

(1) If the regulations specify the time when a fee (the ***basic fee***) is due and payable, the regulations may also specify a fee (a ***late payment fee***) that is due and payable if the basic fee is not paid at or before that time.

(2) Without limiting subsection (1), the late payment fee may relate to each day or part of a day that the basic fee remains unpaid after becoming due and payable.

175 Recovery of fees

A fee (including a late payment 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 court of competent jurisdiction.

176 Secretary may remit or refund fees

(1) The Secretary may remit or refund the whole or part of a fee (including a late payment fee) that is payable, or that has been paid, to the Commonwealth if the Secretary is satisfied there are circumstances that justify doing so.

(2) The Secretary may do so on the Secretary's own initiative or on written application by a person.

177 Secretary may direct that activities not be carried out

If a person (the ***debtor***) is liable to pay a fee (including a late payment fee) that is due and payable, the Secretary 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 fee has been paid.

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Part 7.4—Constitutional provisions

178 Constitutional basis of this Act

Main constitutional basis

(1) Subject to subsection (2), this Act relies on the Commonwealth's legislative power under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia's obligations under the Convention on Tobacco Control.

Section does not apply to certain provisions

(2) This section does not apply to the following provisions of this Act:
  (a) Part 2.4 (prohibition of e-cigarette advertisements);
  (b) Part 2.5 (prohibition of e-cigarette sponsorships);
  (c) Part 3.5 (offences and civil penalty provisions relating to constitutional corporations—tobacco product requirements);
  (d) Chapter 4 (permanent bans on certain tobacco products).

Note: The provisions mentioned in this subsection have limited constitutional operation.

179 Additional operation of this Act

(1) In addition to section 178, this Act also has effect as provided by this section.

(2) To avoid doubt, none of subsections (3) to (8) limit the operation of any other subsection in this section.

Trade and commerce power

(3) This Act has the effect it would have if a reference to conduct were expressly confined to conduct that takes place in the course of, or in relation to, constitutional trade or commerce.

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Communications power

(4) This Act has the effect it would have if a reference to conduct were expressly confined to conduct engaged in using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

Intellectual property power

(5) This Act has the effect it would have if a reference to conduct were expressly confined to conduct engaged in using any of the following within the meaning of paragraph 51(xviii) of the Constitution:
  (a) a copyright;
  (b) a patent of invention or design;
  (c) a trade mark.

Corporations power

(6) This Act has the effect it would have if a reference to conduct were expressly confined to conduct engaged in by:
  (a) a constitutional corporation; or
  (b) persons or entities through which a constitutional corporation acts.

External affairs power—geographically external aspect

(7) The Act has the effect if would have if a reference to conduct were expressly confined to conduct engaged in by a person outside Australia.

Territories power

(8) This Act has the effect it would have if a reference to conduct were expressly confined to conduct:
  (a) that takes place in a Territory; or
  (b) by a body corporate incorporated in a Territory.

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Section does not apply to certain provisions

(9) This section does not apply to the following provisions of this Act:
  (a) Part 2.4 (prohibition of e-cigarette advertisements);
  (b) Part 2.5 (prohibition of e-cigarette sponsorships);
  (c) Part 3.5 (offences and civil penalty provisions relating to constitutional corporations—tobacco product requirements);
  (d) Chapter 4 (permanent bans on certain tobacco products).

Note: The provisions mentioned in this subsection already have limited constitutional operation.

180 Acquisition of property

This Act has no effect to the extent (if any) that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

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Part 7.5—Other matters

181 Delegation by Minister

(1) The Minister may, in writing, delegate to the Secretary the Minister's functions or powers under the following provisions:

(a) subsection 130(3) (about prescribing a person to be a reporting entity);

(b) section 145 (about publishing Chapter 5 reports and information);

(c) section 147 (about publishing non-compliance information in relation to Chapter 5).

Note: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

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

182 Delegation by Secretary

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

Note 1: ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

(2) The functions or powers that may be delegated under subsection (1) include functions or powers the Secretary has as a relevant chief executive, authorised applicant or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act.

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

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183 Protection from liability

(1) This section applies to the following persons (***protected persons***):
  (a) the Minister;
  (b) the Secretary;
  (c) an authorised officer;
  (d) a person acting under an authorised officer's direction or authority.

(2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done by the protected person in good faith:
  (a) in the performance or purported performance of a function or duty under or in relation to this Act; or
  (b) in the exercise or purported exercise of a power under or in relation to this Act.

184 Reports

(1) As soon as practicable after the end of each financial year, the Secretary must cause to be prepared a report on:
  (a) the number and nature of any contraventions of this Act occurring in the financial year; and
  (b) action taken in response to each contravention.

(2) A person who prepares a report under subsection (1) must give a copy to the Minister.

(3) The Secretary, when preparing the Department's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include the report mentioned in subsection (1) insofar as it covers that period.

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185 Regulations

(1) The Governor-General may make regulations prescribing matters:

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

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

Regulations concerning regulated tobacco items

(2) Before regulations are made under or for the purposes of a provision covered by subsection (3), the Minister must be satisfied that the proposed regulations will advance the object in:

(a) paragraph 3(1)(a), which is about improving public health by:

(i) discouraging smoking and the use of regulated tobacco items; and

(ii) encouraging people to give up smoking, and to stop using regulated tobacco items; and

(b) paragraph 3(1)(b), which is about giving effect to certain obligations that Australia has as a party to the Convention on Tobacco Control.

(3) The following provisions are covered by this subsection:

(a) section 8 (insofar as that section relates to regulations that define ***health promotion insert***, ***health warning*** or ***mandatory marking***);

(b) subsection 10(2) (about prescribing an item to be a ***tobacco product accessory***);

(c) paragraph 17(b) (about prescribing the minimum amount for when tobacco products are presumed to be offered for retail sale);

(d) Part 2.2 (prohibition of tobacco advertisements);

(e) Part 2.3 (prohibition of tobacco sponsorships);

(f) Chapter 3 (tobacco product requirements);

(g) Chapter 5 (reporting and information disclosure).

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Regulations concerning e-cigarette products

(4) Before regulations are made under or for the purposes of a provision covered by subsection (5), the Minister must be satisfied that the proposed regulations will advance the object in:

(a) paragraph 3(1)(a), which is about improving public health by:

(i) discouraging smoking and the use of regulated tobacco items; and

(ii) encouraging people to give up smoking, and to stop using regulated tobacco items; and

(b) paragraph 3(1)(c), which is about addressing the public health risks posed by vaping and the use of e-cigarette products.

(5) The following provisions are covered by this subsection:

(a) subsection 11(3) (about prescribing an item to be an ***e-cigarette***);

(b) subsection 12(2) (about prescribing an item to be an ***e-cigarette accessory***);

(c) Part 2.4 (prohibition of ***e-cigarette advertisements***);

(d) subsection 66(2) (about prescribing a contribution to be an ***e-cigarette sponsorship***).

Incorporation of other instruments

(6) Despite subsection 14(2) of the *Legislation Act 2003*, the regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(7) Subsection (6) applies even if the instrument or other writing does not exist when the regulations come into force.

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Temporary exemption under the Trans-Tasman Mutual Recognition Act 1997

(8) Without limiting subsection (1), the regulations may, for the purposes of section 46 of the *Trans-Tasman Mutual Recognition Act 1997*, declare that this Act is exempt from the operation of that Act.

Note: The exemption operates for a period of up to 12 months (see subsection 46(4) of the *Trans-Tasman Mutual Recognition Act 1997*).

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Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

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

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

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

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

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

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

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

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

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Endnote 1—About the endnotes

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

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

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

C[x] = Compilation No. x

ch = Chapter(s)

cl = clause(s)

cont. = continued

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

div = Division(s)

ed = editorial change

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

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)

Ord = Ordinance

orig = original

p = page(s)

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

pres = present

prev = previous

(prev…) = previously

pt = Part(s)

r = regulation(s)/Court rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)

sch = Schedule(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

sub ch = Sub-Chapter(s)

sub div = Subdivision(s)

sub pt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Health (Tobacco and Other Products) Act 2023 (C2023A00118)	118, 2023	14 Dec 2023	s 3-185: 1 Apr 2024 (s 2(1) item 2) Remainder: 14 Dec 2023 (s 2(1) item 1)	
Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024 (C2024A00050)	50, 2024	27 June 2024	sch 3 (items 3, 4): 1 July 2024 (s 2(1) item 4)	—
Administrative Review Tribunal (Miscellaneous Measures) Act 2025 (C2025A00014)	14, 2025	20 Feb 2025	sch 2 (items 58-64): 21 Feb 2025 (s 2(1) item 2)	—
Health Legislation Amendment (Improved Medicare Integrity and Other Measures) Act 2025 (C2025A00038)	38, 2025	4 Sept 2025	sch 3: 5 Sept 2025 (s 2(1) item 6)	sch 3 (items 5, 8)

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1.2	
Division 1	
s 8	am No 14, 2025, No 38, 2025
Chapter 2	
Part 2.1	
s 18	am No 38, 2025
Part 2.3	
Division 2	
s 39	am No 38, 2025
Part 2.4	
Division 3	
s 47	rep No 38, 2025
s 53	rs No 38, 2025
s 54	rep No 38, 2025
s 55	rep No 38, 2025
Division 5	
s 57	rep No 38, 2025
s 58	rep No 38, 2025
s 59	rep No 38, 2025
Part 2.5	
Division 2	
s 66	am No 38, 2025
Division 5	
s 64	am No 50, 2024

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 3	
Part 3.3	
Division 1	
s 78	am No 38, 2025
s 82	am No 38, 2025
Division 3	
s 86	am No 38, 2025
Part 3.6	
Division 1	
s 120	am No 38, 2025
Division 1A	
Division 1A	ad No 38, 2025
s 120A	ad No 38, 2025
s 120B	ad No 38, 2025
s 120C	ad No 38, 2025
s 120D	ad No 38, 2025
Chapter 5	
Part 5.2	
Division 2	
s 142	am No 14, 2025
Division 3	
s 147	am No 14, 2025
Chapter 6	
Part 6.2	
Division 1	
s 150	am No 38, 2025
Chapter 6A	
Part 6A.2	
s 163C	ed C1

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