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HOUSE OF REPRESENTATIVES

TOBACCO PLAIN PACKAGING BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Hon Nicola Roxon MP)

TOBACCO PLAIN PACKAGING BILL 2011

OUTLINE

The Australian Government is implementing a comprehensive suite of reforms to reduce smoking and its harmful effects. As part of these reforms the Government committed to introduce legislation requiring plain packaging of tobacco products, to remove one of the last remaining frontiers for tobacco advertising.

Tobacco smoking remains one of the leading causes of preventable death and disease among Australians, killing over 15,000 Australians every year. The social costs of smoking (including health costs) are estimated at \$31.5 billion each year. Although the number of daily smokers in Australia has fallen by more than half a million in the last decade, approximately three million Australians still smoke.

The Government is committed to reaching the performance benchmarks set under the COAG National Healthcare Agreement of reducing the national smoking rate to 10 per cent of the population by 2018 and halving the Aboriginal and Torres Strait Islander smoking rate.

This Bill is a crucial step in the Government's anti-smoking action plan, which includes the 25 per cent excise increase announced in April 2010, record investment in anti-smoking social marketing campaigns, and legislation to restrict advertisement of tobacco products on the internet.

The rationale for plain packaging

This Bill will prevent tobacco advertising and promotion on tobacco products and tobacco product packaging in order to:

- reduce the attractiveness and appeal of tobacco products to consumers, particularly young people;
- increase the noticeability and effectiveness of mandated health warnings;
- reduce the ability of the tobacco product and its packaging to mislead consumers about the harms of smoking; and
- through the achievement of these aims in the long term, as part of a comprehensive suite of tobacco control measures, contribute to efforts to reduce smoking rates.

Messages and images promoting the use of tobacco products can normalise tobacco use, increase uptake of smoking by youth and act as disincentives to quit. Research shows that packaging of tobacco products is an important element of advertising and promotion and its value has increased as traditional forms of advertising and promotion have become restricted in countries such as Australia¹. Tobacco packaging's primary role is to promote brand appeal, particularly to youth and young adults² while plain packaging has been shown to be less appealing for youth who might be thinking of trying smoking¹. Many smokers are also misled by pack design

¹Hammond et al 2009, 'Cigarette pack design and perceptions of risk among UK adults and youth', *European Journal of Public Health*, vol. 19, no. 6, pp. 631–637 and Moodie, C & Hastings, G 2009, 'Making the Pack the Hero, Tobacco Industry Response to Marketing Restrictions in the UK: Findings from a Long-Term Audit', *Int Journal Mental Health Addiction*

²Hammond et al 2009, 'Cigarette pack design and perceptions of risk among UK adults and youth', *European Journal of Public Health*, vol. 19, no. 6, pp. 631–637

into thinking that certain cigarettes may be safer³. Pack design can also distract from the prominence of graphic health warnings⁴.

The Commonwealth, through the *Tobacco Advertising Prohibition Act 1992* (the TAP Act), is responsible for banning almost all forms of tobacco advertising and promotion. However, words, signs or symbols that appear on a tobacco product or its packaging are currently a key exception to the definition of “tobacco advertisement” in the TAP Act. The introduction of plain packaging for tobacco products will have the practical effect of limiting the extent to which this exception can be used.

International framework

The introduction of plain packaging for tobacco products is one of the means by which the Australia Government will give effect to Australia’s obligations under the World Health Organization *Framework Convention on Tobacco Control* [2005] ATS 7 (WHO FCTC).

Article 5 of the WHO FCTC requires each Party to develop and implement comprehensive national tobacco control strategies, plans and programs, and to take effective legislative and other measures for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke.

Article 11 of the WHO FCTC requires Parties to implement effective measures to ensure that tobacco packaging does not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about its characteristics, health effects, hazards or emissions.

Article 13 of the WHO FCTC requires Parties to implement comprehensive bans on tobacco advertising, promotion and sponsorship.

Guidelines adopted by the Conference of the Parties to the FCTC for Article 11 and Article 13 recommend that Parties consider introducing plain packaging.

Consultation undertaken

The Government consulted broadly on the draft of this legislative scheme. Targeted consultations were conducted with the tobacco industry about possible anti-counterfeiting measures that might be included in the packaging design, and with retailers on concerns about the handling of plain packaged products in a retail setting. Cigar importers were also consulted on concerns about importing provisions in the Exposure Draft of the Bill.

³Hammond D & Parkinson C 2009, ‘The impact of cigarette package design on perceptions of risk’, *Journal of Public Health*, pp. 1–9; Hammond et al 2009, ‘Cigarette pack design and perceptions of risk among UK adults and youth’, *European Journal of Public Health*, vol. 19, no. 6, pp. 631–637; Moodie, C & Hastings, G 2009, ‘Plain Packaging: a time for action’, *European Journal of Public Health*, pp. 10–1; and Wakefield M et al 2002, ‘The cigarette pack as image: new evidence from tobacco industry documents’, *Tobacco Control*, 2002;11(Suppl I):i73–i80.

⁴Germain D et al 2009, ‘Adolescents’ Perceptions of Cigarette Brand Image: Does Plain Packaging Make a Difference?’, *Journal of Adolescent Health*, (2009) 1– 8; Moodie, C & Hastings, G 2009, ‘Making the Pack the Hero, Tobacco Industry Response to Marketing Restrictions in the UK: Findings from a Long-Term Audit’, *Int Journal Mental Health Addiction*; Wakefield M et al 2002, ‘The cigarette pack as image: new evidence from tobacco industry documents’, *Tobacco Control*, 2002;11(Suppl I):i73–i80; and Hoek J, Wong C, Gendall P, et al 2010, ‘Effects of dissuasive packaging on young adult smokers’, *Tobacco Control*.

A public consultation process on the exposure draft of the Bill, including a consultation paper, commenced on 7 April 2011 and ended on 6 June 2011. Some 266 submissions were received from a range of stakeholders including public health organisations, non-government organisations, the tobacco industry (manufacturers and importers), tobacco retailers and interested individuals.

There was strong support for the Bill amongst the public health and non-government organisations, including endorsement of the view that the proposed plain packaging legislation was necessary for the government to meet its commitment to Article 13 of the WHO FCTC, and the guidelines issued by the Conference of the Parties. Some submissions opposing the Bill claimed a perceived inadequacy of evidence to justify the plain packaging measure; a potential for detrimental impact on the tobacco industry and retailers; and the potential for the Bill to be in breach of national trade mark and intellectual property rights as well as international law obligations.

A small number of submissions suggested changes to the exposure draft of the Bill. Of particular concern to importers and retailers was the ability to comply with the provision in the exposure draft that required all products imported into Australia to be in plain packaging. This would have prevented tobacco products from being imported in non-compliant packaging, and then repackaged for supply in the Australian market. The provisions in the exposure draft that required all products imported into Australia to comply with plain packaging requirements have therefore been removed. Instead, the Bill requires compliance with plain packaging from the first on-sale (wholesale/retail) of imported products in the supply chain in Australia, allowing importers to repackage goods into compliant packaging once they are received in Australia.

The legislation

This Bill will make it an offence to sell, supply, purchase, package or manufacture tobacco products or packaging for retail sale, that are not compliant with plain packaging requirements. These offences apply to manufacturers, packagers, wholesalers, distributors and retailers of tobacco products in Australia who fail to comply with the plain packaging requirements.

A person who buys non-compliant products for personal use would not commit an offence, although the salesperson might.

There is also a broad exception from the relevant offence provisions in relation to tobacco products for export, rather than for retail sale in Australia. Retail sale in Australia to travellers going overseas is subject to the plain packaging requirements.

Chapter 2 of the Bill sets out detailed requirements relating to the packaging of tobacco products and the products themselves. The Bill also provides for regulations to prescribe additional requirements. The effect of the requirements will be that tobacco company branding, logos, symbols and other images that may have the effect of advertising or promoting the use of the tobacco product will not be able to appear on tobacco products or their packaging. So as to identify the particular brand or variant of a tobacco product, the brand name and variant name will be allowed on packaging in specified locations, with a specified 'plain' appearance. Information which is required by other legislation or regulations, such as trade descriptions and graphic health warnings, will also be allowed to appear.

The Bill does not limit the operation of State or Territory laws relating to packaging and appearance of tobacco products, where those laws are capable of operating concurrently with the provisions of the Bill. It is expected that Commonwealth and State and Territory tobacco control laws will continue to operate alongside each other. However, if there is any conflict between State and Territory laws and the plain packaging requirements, the Bill will prevail.

The Bill prevents a trade mark from being placed on tobacco products or their retail packaging, so as to prevent trade marks from being used as design features to detract attention from health warnings, or otherwise to promote the use of tobacco products. However, the Bill ensures that its operation will not affect trade mark owners' ability to protect their trade marks from use by other persons, and to register and maintain the registration of a trade mark. Owners of trade marks in relation to tobacco products will be able to use their trade marks, other than on retail packaging and the products themselves, in ways that do not contravene the TAP Act or other laws, for example on business correspondence.

Other regulation of packaging and tobacco products

It is intended that this Bill will operate alongside other regulatory mechanisms for tobacco products, and packaging generally. Although the Bill regulates information that may appear, and the ways in which certain required information may appear, this Bill is not intended to interfere with other regulation of tobacco products, including any regulation creating a requirement for packaging generally that is applicable to retail packaging for tobacco products. Nor is the Bill intended to interfere with a ban on any form of tobacco product whether or not that product would fall within the definition of 'tobacco product' for the purposes of the Bill. The Bill is not intended to detract from any form of regulation of advertising of tobacco products, but is intended to support existing advertising restrictions in so far as it creates requirements to restrict advertising on tobacco products themselves or on their packaging.

There is no intention that this Bill will override the various forms of regulation of tobacco products that already exist, including but not limited to:

- requirements for graphic health warnings to appear on packaging, under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*; and for performance standards and labeling of cigarettes, under the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*;
- bans on advertising of tobacco products through the TAP Act;
- requirements for payment of excise on tobacco products through the *Excise Act 1901*, *Excise Regulations 1925* and the *Excise Tariff Act 1921*, and through the *Customs Act 1901*, *Customs Regulations 1926* and the *Customs Tariff Act 1995* for imported tobacco; and
- bans on smokeless tobacco products through the *Trade Practices Act 1974 – Consumer Protection Notice No. 10 of 1991 – Permanent Ban on Goods*.

Nor is there any intention to override the requirements that exist for the packaging of products generally, and are applicable to tobacco products, including the:

- *National Trade Measurement Regulations 2009*; and the
- *Commerce (Imports) Regulations 1940*.

Financial Impact Statement

It is not expected that the proposed Bill will have any significant financial impact when initially enacted. Cost recovery will be considered dependent on the costs of monitoring and enforcement.

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NOTES ON CLAUSES

CHAPTER 1 – PRELIMINARY

Part 1 – Preliminary

Clause 1 – Short Title

This clause provides that the Bill, once enacted, may be cited as the *Tobacco Plain Packaging Act 2011*.

Clause 2 – Commencement

Different parts of the Bill are scheduled to commence on different dates:

- On the day the Act receives Royal Assent, the provisions of the Act that give the short title of the Act and provide for commencement will commence.
- On 1 January 2012, other preliminary provisions of the legislation; the power to make regulations specifying plain packaging requirements; and the provisions that allow the authorised investigative and enforcement officer roles to be established will commence.
- On 20 May 2012, the offences relating to packaging and manufacturing non-compliant tobacco products as well as manufacturing non-compliant retail packaging will commence, along with the investigation and enforcement powers of authorised officers.
- On 1 July 2012, the offences relating to selling and purchasing non-compliant tobacco products and tobacco products in non-compliant packaging will commence.

Rationale

During targeted consultations, some retailers of tobacco products requested a clear end-point to the manufacture and/or import of non-compliant tobacco products and packaging ahead of the end-point for retail sale to ensure there would be enough time for stocks of non-plain packaged product to be sold before the 1 July 2012 date for full commencement of the legislation. The period allowed in the Bill, in relation to manufacture and packaging of tobacco products, is six weeks. As already described, following consultations, it was decided not to prohibit the import of non-compliant products.

To allow the Bill to be effectively administered, information gathering and enforcement powers will also come into effect on commencement of the legislation on 20 May 2012. Various other administrative provisions will take effect with commencement of the legislation on 1 January 2012 so that required structures can be put in place, and to ensure that the tobacco, packaging and retail industries can be given as much notice as possible of the regulations made under the legislation.

Clause 3 – Objects of this Act

This clause provides that the objects of this Bill are to improve public health by reducing people's use of and exposure to tobacco products; and to give effect to certain of Australia's obligations under the WHO FCTC.

Recognising that these broad objectives are only achievable in combination with other tobacco control measures, clause 3(2) provides that the regulation of the appearance of tobacco products and packaging is intended to contribute to improving public health by:

- reducing the appeal of tobacco products to consumers;
- increasing the effectiveness of health warnings on the retail packaging of tobacco products; and
- reducing the ability of the packaging of tobacco products to mislead consumers about the harmful effects of smoking.

Clause 3 is not intended to be an exhaustive list of ways in which public health may be improved or Australia's obligations under the WHO FCTC may be met.

Clause 4 – Definitions

This clause contains definitions of terms used in the Bill.

'cigarette carton'

The requirements for retail packaging of 'cigarette cartons' apply to any container for retail sale that contains cigarette packs. A carton that is not 'retail packaging', such as a box or crate for wholesale distribution, is not within the scope of the plain packaging requirements.

'cigarette pack'

The term 'cigarette pack' refers to all containers for retail sale in which cigarettes are directly placed.

'container'

A reference to a 'container' is a broad reference to anything that contains a tobacco product. The definition provides a non-exhaustive list of examples of the types of container that may be referred to.

'fire risk statement'

A reference to a 'fire risk statement' in the Bill is a reference to the labelling requirements for tobacco products that are currently prescribed by the *Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008*. The definition provides for the reduced fire risk warning requirements to be specified under a variety of legislative instruments, arising from recent amendments to the *Trade Practices Act 1974* resulting in the *Competition and Consumer Act 2010*.

'health warning'

A reference to 'health warnings' in the Bill will be a reference to the labelling requirements for tobacco products that are widely known by that term. The definition provides for health warning requirements to be specified under a variety of legislative instruments, to accommodate future amendments to the existing regulations under the *Competition and Consumer Act 2010*.

'inner surface'

A reference to 'inner surface' will refer to the ordinary English meaning of the term, and will include specific surfaces that are referred to in section 6(2) of the Bill.

‘insert’

A reference to an ‘insert’ in the Bill refers to anything placed in tobacco packaging that is not a tobacco product, but does not refer to things that are part of the packaging including the lining of a cigarette pack.

‘mark’

This definition clarifies that where the Bill refers to ‘marks’, this includes lines, letters, numbers, symbols, graphics and images, and other marks within the ordinary meaning of the word, but does not include trade marks.

‘offer’

The definition of ‘offer’ a tobacco product for sale is provided to clarify that tobacco products that are available for sale but not visible to the public are being ‘offered’ for sale. This addresses the fact that States and Territories have placed restrictions or bans on display of cigarettes at the point of sale, with the result that tobacco products are available for sale even though they may not be visible.

‘onsert’

A reference to an ‘onsert’ in the Bill means anything that is attached to retail packaging for tobacco products, or forms part of the packaging, but does not include the lining of the packaging. This definition has been adapted from the WHO FCTC.

‘outer surface’

Similar to the meaning of ‘inner surface’, a reference to an ‘outer surface’ will refer to the ordinary English meaning of the term, and is further clarified by section 6(1).

‘retail packaging’

The packaging that will be regulated by the Bill includes any container that a tobacco product is packed in for retail sale. This includes the package immediately around the tobacco product, any carton that contains one or more packages of tobacco products for retail sale, any wrapper that covers the packaging of a tobacco product or a tobacco product itself, and anything placed in the packaging apart from the tobacco product and anything attached to or forming part of the packaging. Where there is more than one form of packaging used for retail sale, for example where a carton or other container holds more than one packet of tobacco products, each layer of packaging including the initial packet and the carton will have to comply with plain packaging requirements.

The Bill will not apply to packaging of tobacco products that is used solely for the purpose of shipping or wholesale distribution, for example large boxes, crates or packing containers.

‘sign’

‘Sign’ when used as a noun has the meaning given by subsection 6(1) of the *Trade Marks Act 1995*:

‘*sign*’ includes the following or any combination of the following, namely, any letter, word, name, signature, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent.

‘tobacco product’

The definition of ‘tobacco product’ in the Bill means that generally any product containing tobacco, no matter how small the amount, will be within the scope of the Bill if it was manufactured for smoking, sucking, chewing or snuffing.

This definition is based on the definition in the WHO FCTC. It is intended to encompass all tobacco products designed for human consumption, and will include, for example, cigarettes, cigars, roll-your-own tobacco, bidis, kreteks, little cigars, and dissolvable tobacco products such as tablets containing tobacco for sucking.

It is important to note that therapeutic goods, which are aimed at helping people to quit their use of tobacco products, will not be regulated by the Bill when they are included on the Australian Register of Therapeutic Goods. Products that contain nicotine but do not contain any tobacco will not be regulated by the Bill.

The broad definition of ‘tobacco products’ may encompass some tobacco products which are unlawful, under Commonwealth, State or Territory laws that regulate the use and sale of tobacco, and that are not affected by the operation of this Bill.

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

This clause provides that the word ‘package’, when used as a verb in relation to tobacco products for retail sale, will refer to certain actions relating to placing or wrapping tobacco products in retail packaging within the definition of the Bill. Other forms of the verb, such as ‘packaged’ have an equivalent meaning.

Clause 6 - Rules relating to surfaces of cigarette packs and cigarette cartons

This clause clarifies the status of the inner and outer faces of cigarette packs and cartons, whether they are open or closed. For example, the clause clarifies that a reference to the front face of a cigarette pack refers to the entire front face, including the part of the front surface that is part of the flip-top lid, whether the flip-top lid is open or closed. Similarly, this clause provides that faces of cartons that are only visible after the carton has been opened are inner faces.

Clause 7 - References to contraventions of civil penalty provisions

This clause is intended to help identify the specific sub-clause that is contravened in a civil penalty provision. This is important in achieving certainty in potential legal proceedings. It is aimed at avoiding potential confusion caused by the fact that the last subsection in a civil penalty provision is technically the civil penalty provision, but in fact is not itself capable of being contravened. Therefore, this clause points to subsection (1) of the relevant provision as the civil penalty provision that is contravened.

This clause does not apply to clause 91. That clause provides that a person who contravenes a civil penalty provision does not commit an offence. A person who contravenes a civil penalty in Chapter 3, within the meaning of clause 7, would commit both a fault-based and strict liability offence. Clause 91 is only intended to refer to each subsection in Chapter 3 that has the words “Civil penalty” set out at its foot.

Clause 8 – Act extends to external Territories

This clause provides that the Bill will have application in every external territory.

Clause 9 – Act binds the Crown

This clause provides that the Bill binds the Crown, but does not make the Crown liable to be prosecuted for an offence, given an infringement notice, or subject to civil proceedings for a civil penalty for a contravention of a civil penalty provision.

Clause 10 - Inconsistency with other Commonwealth legislation

This clause sets out the legislative instruments that are intended to prevail over the Bill, where there are any inconsistencies between the Bill and other legislation. This is an exhaustive list. The instruments that would prevail over the Bill consist of the existing instrument in relation to the appearance of graphic health warnings on packaging, and any changes or amendments to that instrument.

Plain packaging for tobacco products is intended to prevent branding from detracting from health warnings. The Bill is not intended to interfere with requirements in the listed legislation about the appearance of packaging or products.

Clause 11 – Operation of State and Territory Laws

This clause provides that the Bill does not limit the operation of State or Territory laws relating to packaging and appearance of tobacco products, where those laws are capable of operating concurrently with the requirements of the Bill. It is expected that Commonwealth and State and Territory tobacco control laws will continue to operate alongside each other.

It is expected that State and Territory governments will continue to implement regulatory reforms in the areas of tobacco retailing and exposure to secondhand smoke, in order to ensure effective public health regulation. Most recently and notably, States and Territories have implemented restrictions and bans on point of sale advertising and retail displays of tobacco products; and bans on smoking in cars and other environments in which children may be exposed to secondhand smoke.

Where conduct could be an offence against both the provisions of this Bill and a State or Territory law, the Bill will not limit the application of that State or Territory law.

Where there is any conflict between the provisions of this Bill and any State or Territory law, the provisions of this Bill will prevail.

Clause 11(3) includes a definition of ‘*relevant tobacco law*’ because there are numerous regulatory requirements for tobacco products. A relevant tobacco law may also regulate other products.

Part 2 – Simplified Outlines

Part 2 (clauses 12-13) provides simplified outlines for the Bill, and for Chapter 1 of the Bill to aid understanding of the relevant clauses.

Part 3 – Constitutional Provisions

Clause 14 – Additional Operation of this Act

The Bill is supported by the external affairs power in section 51(xxix) of the Commonwealth Constitution, as it gives effect to obligations under the WHO FCTC.

In case there is any doubt that all of the provisions are fully supported by the external affairs power, the Bill is drafted in a way that relies on alternative or supplementary heads of legislative power in the Constitution. This clause provides for the prohibitions on engaging in conduct in the Bill to have effect in such a way as to be supported by the Commonwealth's constitutional powers in section 51(xx) with respect to corporations; section 51(i) with respect to international and interstate trade and commerce; and section 122 of the Constitution, with respect to the Territories. For example, if a particular requirement of the Bill was held by a court not to be appropriate and adapted to give effect to Australia's obligations under the FCTC, but could still apply in relation to a constitutional corporation, then the requirement would be valid in relation to constitutional corporations.

The reference to “engaging in conduct” in this clause refers to the conduct that is referred to in each offence in Chapter 3 such as, for example, selling or supplying, purchasing, or manufacturing a tobacco product.

Clause 15 – Acquisition of Property

The Bill has been drafted so as to avoid the potential for any acquisition of property other than on just terms that would be contrary to section 51(xxxi) of the Constitution. However, out of an abundance of caution, this clause provides that the Bill does not apply to the extent that it would cause an acquisition contrary to section 51(xxxi). More specifically, it provides that if preventing the use of trade marks on tobacco products or their packaging, without providing compensation, is contrary to section 51(xxxi) of the Constitution, the trade marks can be used. However, the regulations may prescribe restrictions (for example, on size and placement) for the purposes of this provision.

Any other requirements for plain packaging of tobacco products will continue to apply.

The Bill does not include a general provision for the payment of compensation in the event that its operation would otherwise result in an acquisition of property other than on just terms. However, it does include two provisions providing for payment of compensation, in specific, narrow circumstances. These are clause 66, relating to damage caused by electronic equipment being operated in relation to enforcement of the Bill, and clause 74 relating to disposal by the Secretary of the relevant Department, of things that have been seized in the course of enforcement action.

Clause 16 – Implied freedom of political communication

This clause provides that the Bill does not apply to the extent that it would infringe any implied constitutional freedom of political communication.

CHAPTER 2 – REQUIREMENTS FOR PLAIN PACKAGING AND APPEARANCE OF TOBACCO PRODUCTS

Chapter 2 outlines general requirements for plain packaging of tobacco products, and some specific requirements for cigarette packs and cartons. Chapter 2 also provides for the Governor-General to make regulations specifying requirements for plain packaging and the appearance of tobacco products among other things, to further the objects of the Bill.

Part 1 – Simplified outline

Part 1 (clause 17) provides a simplified outline of Chapter 2, to aid in understanding of relevant clauses.

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

Division 1 – Requirements for retail packaging of tobacco products

This Division sets out the requirements for retail packaging of tobacco products generally, as well as some specific requirements for cigarette packs and cigarette cartons. It also sets out areas where regulations may prescribe additional requirements.

Clause 18 - Physical features of retail packaging

This clause provides that no decorative ridges, embossing, bulges, irregularities of shape or texture, or other embellishments, including coloured glues or adhesives, can be used on tobacco packaging.

Specific requirements for cigarette packs and cartons are also applied following research undertaken to determine the impact on consumers and potential consumers of innovative packaging shape, size and opening. The research indicated that all these elements of pack design created strong associations with level of appeal and perceived traits associated with branding. This clause provides that cigarette packs and cartons must have a standardised rectangular shape with no decorative elements, and cigarette packs must have flip-top openings. The lining of cigarette packs must only be foil backed with paper, or a material allowed by regulations, and must also comply with requirements for cigarette packs.

Clause 19 - Colour and finish of retail packaging

This clause provides that all faces, both inner and outer, of retail tobacco packaging and any lining of cigarette packs must be drab dark brown in a matt finish. Market research found that a particular shade of drab dark brown was optimal in terms of decreasing the appeal and attractiveness of tobacco packaging, decreasing the potential of the pack to mislead consumers about the harms of tobacco use, and increasing the impact of graphic health warnings.

Other information, such as health warnings and manufacturer's details, which are permitted or required to appear on the packaging will not be required to be drab dark brown. Some requirements for this information are prescribed by clause 21.

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

To ensure that no other design features detract from the impact of the plain packaging requirements, no trade marks or other marks are permitted to appear on tobacco packaging, unless required under the other legislative instruments outlined at proposed section 6, or permitted by or under the Bill, or relevant regulations.

Trade marks that will be allowed include, for example, the Quitline trade mark which is required under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*, and any brand, business or company name or variant name trade marks that can appear whilst still complying with the detailed requirements of the Bill and regulations.

This clause also requires that the brand, business, company or variant names that may appear on cigarette packs appear in a particular way, in specific locations on the packs, and must not obscure any other tobacco legislative requirements.

This clause does not apply to wrappers of retail packaging or of tobacco products, which are dealt with separately in clause 22.

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

Clause 21(1) provides for requirements, to be prescribed in the regulations, for the appearance and placement of any brand, business name or company name or variant name on the retail packaging of tobacco products generally.

Clause 21(2) prescribes requirements for the appearance of any brand, business name or company name or variant name that appears on a cigarette pack or carton.

Clause 21(3) provides that any legislative requirement (other than health warnings) must comply with any requirements prescribed by the regulations. This is intended to clarify that only the requirements for health warnings prevail over this legislation, and to ensure that where other required information appears, it is consistent with the plain packaging requirements.

This clause does not apply to wrappers of retail packaging or of tobacco products, which are dealt with separately in clause 22.

Clause 22 - Requirements for wrappers

This clause provides that any wrapper that covers packs or cartons containing tobacco products or a wrapper that itself contains a tobacco product, must be transparent and not coloured, and no marks (either trade marks or otherwise) may appear unless permitted by the regulations.

Clause 23 - Retail packaging not to have inserts or onserts

This clause provides that no inserts or onserts can be included in or on tobacco retail packaging, unless they are permitted by the regulations.

Clause 24 - Retail packaging not to produce noise or scent

This clause provides that no retail packaging of tobacco products may make a sound or produce a scent that could be taken to advertise or promote the tobacco products. This clause only applies to the retail packaging and is not intended to prohibit the use of scents as a constituent of the tobacco products itself, such as menthol in cigarettes.

Clause 25 - Retail packaging must not change after retail sale

This clause is intended to prevent sale of tobacco products in retail packaging that is compliant with plain packaging requirements at the time of sale, but that is designed to change. To assist with interpretation of this clause, a non-exhaustive list of technologies known to be able to change the appearance of retail packaging after sale is provided.

This clause does not affect changes that an individual may make after purchasing products for personal use, for example by opening the packaging.

Division 2 – Requirements for appearance of tobacco products**Clause 26 - Requirements for appearance of tobacco products**

This clause provides that no tobacco product may display a trade mark or other mark, unless permitted by the regulations.

This Bill creates the first restriction on how cigarettes themselves are to appear in Australia. Cigarette sticks currently have a range of decorative elements printed on them, including brand names, use of colour, bands, filter designs and filter colours. Research shows that the inclusion of brand names and other design embellishments on cigarettes are strongly associated with the level of appeal and perceived traits associated with branding, such as sophistication. Guidelines for the implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO FCTC identify product design features as a form of tobacco advertising and promotion that should be regulated.

Division 3 – Miscellaneous

This Division sets out clauses which clarify the application of the other provisions in Chapter 2, Part 2, in relation to regulations made under this Act, and in relation to the *Trade Marks Act 1995* and the *Designs Act 2003*.

Clause 27 - Regulations may prescribe additional requirements

This clause provides that the regulations may prescribe requirements in relation to the retail packaging of tobacco products and the appearance of tobacco products, in addition to the specific areas of regulation provided for in other parts of Chapter 2.

This section provides a broad power to make regulations to further the objects of the Bill. However, this power is not intended to interfere with the operation of other regulation making powers set out in Chapter 2.

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

The Bill prevents trade marks from being placed on tobacco products or their retail packaging. However, clause 28 preserves a trade mark owner's ability to protect a trade mark, and to register and maintain registration of a trade mark. To this end, clause 28 provides for the way various provisions of the *Trade Marks Act 1995* and the *Trade Marks Regulations 1995* will operate in relation to the provisions of the Bill. For example, a tobacco manufacturer that applies for the registration of a trade mark in respect of tobacco products is taken to intend to use the trade mark in Australia, if it would use it on the products or retail packaging, but for the operation of the Bill. Similarly, if someone applies for removal of a trade mark from the register, alleging that the trade mark has not been used, this allegation will be rebutted by evidence that the registered owner would have used the trade mark, but for the operation of the Bill.

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

This clause prevents an order being made requiring a licence to be granted in relation to a registered design, or revoking registration of a design under the *Designs Act 2003*, as a result of the provisions of the Bill preventing the use of a registered design.

CHAPTER 3 – OFFENCES AND CIVIL PENALTY PROVISIONS

This Chapter creates several offences relating to tobacco products and packaging that do not comply with plain packaging requirements. These offences relate to the sale or supply, purchase, packaging, or manufacturing of tobacco products for retail sale. They will apply to commercial participants in the tobacco industry in Australia who fail to comply with the requirements for tobacco products and packaging created under Chapter 2. They will not apply to people who purchase tobacco products for their personal use, nor will they apply to conduct (other than retail sale) undertaken for the purposes of exporting tobacco products and packaging.

Each of the offences set out in this Chapter is a fault-based criminal offence, which also has a corresponding strict liability offence (that is, where no fault elements apply to the physical elements of the offence), as well as a civil penalty provision for the same conduct.

Criminal offences

Fault-based criminal offences, for which an accused individual or corporation may be prosecuted, must be proved beyond reasonable doubt in court. For some elements of fault-based criminal offences, strict liability is applied. This means no intention or state of mind of the individual or body corporate needs to be proved. This applies to offences where one or more elements of the offence require that:

- the product or packaging being dealt with is for retail sale, for example that packaging is retail packaging or that products are packaged for retail sale; or
- a party to certain dealings, including arrangements and contracts to produce or package tobacco products, is a constitutional corporation; or
- a mark that appears on retail packaging is the mark of a constitutional corporation.

Strict liability is applied to these elements of the fault-based offences because a requirement to prove fault in relation to the matters listed above would undermine the deterrent effect of the offence, and would represent a significant burden on the prosecution.

Each fault-based criminal offence also has a corresponding strict liability offence, in which no fault elements are required for the physical elements of the offence. Like fault-based criminal offences, strict liability criminal offences must also be proved beyond reasonable doubt. A defendant will be able to raise the defence of honest and reasonable mistake of fact. These offences are replicated as strict liability offences, to ensure the availability of offences with lower penalties, that will encourage retailers and other parties who frequently deal with tobacco products, and who provide tobacco products to consumers, to avoid accepting and selling non-compliant tobacco products. This will aid in reducing consumer exposure to branded tobacco packaging.

The strict liability offences also form the basis for the infringement notice scheme created through Chapter 5, Part 3 of the Bill.

Consistent with Part 4.5 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, the offences are not punishable by imprisonment. Maximum penalties for the offences are in line with those set out by Part 4.5.

Civil penalty scheme

The civil penalty scheme allows the Secretary of the relevant Department, (currently the Department of Health and Ageing) or a delegate to apply to the Federal Court for an order that a person must pay a civil penalty for contravention of the plain packaging requirements. The civil penalty scheme is designed to encourage compliance with the legislative requirements without resorting to criminal prosecution. Contraventions of a civil penalty provision must be proved on the balance of probabilities in a court, and the court may order a monetary amount to be paid as the penalty.

Which provision will apply?

The Commonwealth will decide in each particular case whether to prosecute a person for a fault-based or strict-liability offence, or whether to bring proceedings for a civil penalty order. A person may only be prosecuted for a fault-based or strict liability offence, not both, and once convicted of a criminal (fault-based or strict liability) offence a person could not be pursued for civil penalties. However, proceedings for a contravention of a civil penalty provision could be brought prior to a person being prosecuted for a criminal offence.

Penalties

The level of penalties applied to offences in this Bill is based on the penalties set out in the *Competition and Consumer Act 2010*. This is to ensure that penalties for a breach of plain packaging requirements are the same as the penalties that could be applied under the *Australian Consumer Law* (which is Schedule 2 of the *Competition and Consumer Act 2010*) for a breach of the requirements to display graphic health warnings.

Under this Bill:

- the maximum penalty amount for a fault-based criminal offence committed by an individual is 2,000 penalty units (currently \$220,000), and for a breach by a body corporate is 10,000 penalty units (currently \$1.1 million);
- the maximum penalty amount for a strict-liability criminal offence committed by an individual is 60 penalty units (currently \$6,600) and committed by a body corporate is 300 penalty units (currently \$33,000); and
- the maximum civil penalty that may be awarded is the same as for fault-based criminal offences.

Consistent with the *Australian Consumer Law*, the high maximum penalties are intended to address the most serious cases of non-compliance, such as individuals or corporations who deal with a high volume of non-compliant products, and to address repeat offenders. The maximum penalties are intended to be a deterrent, primarily to the manufacturers, importers and other large scale suppliers participating in the tobacco industry.

As the plain packaging requirements under the Bill are intended to support the appearance of graphic health warnings on tobacco products, an offence under the requirements of the Bill is considered equivalent in severity to an offence relating to failure to comply with requirements for graphic health warnings under the *Australian Consumer Law*, and the same level of penalties applies for each. This is consistent

with Part 5.1 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

The maximum penalty amount of a strict liability criminal offence committed by an individual is 60 penalty units, and committed by a body corporate is 300 penalty units. This lower penalty amount is the recommended maximum penalty applicable for strict liability offences. This penalty is significantly lower than the maximum penalties for fault-based offences and civil penalty provisions, in recognition of the fact that strict liability offences will be pursued to put small volume dealers and first offenders on notice that they are committing an offence under the requirements of the Bill, and to deter recurrent non-compliance. The higher maximum penalties will be applied in cases of deliberate and recurrent non-compliance.

Onus of Proof

Some sections in this Chapter place the onus of proof on the defendant for certain elements of the offence. This is because it would be significantly more difficult for the prosecution to prove these elements, than it would be for the defendant to disprove them, since the relevant information is known particularly to the defendant.

Provisions where the onus of proof is reversed are:

- Clauses 32, 38, 41 and 48 – a person who wishes to claim they purchased tobacco products for personal use rather than commercial or other uses will bear the evidential burden in relation to that matter;
- Clause 35 – a manufacturer who wishes to claim they took all reasonable steps to ensure that retail packaging complied with tobacco product requirements will bear the evidential burden in relation to that matter;
- Clause 49 – a person who wishes to rely on the export exception to a relevant offence will bear the evidential burden in relation to the relevant matters.

In each of these cases, the exception is dependent on particular knowledge or intent of the defendant. It would be significantly more difficult for the prosecution to prove the intention of an individual to purchase a tobacco product for personal use, than for the defendant to show their history of tobacco use and purchases, and their particular intentions in each instance. Similarly, a manufacturer will have particular knowledge and proof of any steps undertaken to ensure retail packaging complied with plain packaging requirements, and would also have documentation relevant to the intended market for the product in instances where the product is intended for export.

The reversal of the onus of proof in these circumstances is considered to be consistent with Part 4.6 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

Jurisdiction

As the Bill does not deal with the jurisdiction for the offences in this Chapter, section 68 of the *Judiciary Act 1903* will apply to confer jurisdiction on state and territory courts.

Part 1 – Simplified outline

Part 1 (clause 17) provides a simplified outline of Chapter 3 to aid in understanding of the relevant clauses.

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

Division 1 – Non-compliant retail packaging of tobacco products

This Division sets out the general offences for non-compliant packaging of tobacco products. The clauses provide that it will be an offence to:

- sell, offer or otherwise supply a tobacco product that has been packaged for retail sale and is not compliant with plain packaging requirements; whether or not the product is visible when offered for sale, and whether or not payment is required, given or accepted for the tobacco product (clause 31);
- purchase a tobacco product that has been packaged for retail sale and is not compliant with plain packaging requirements; but the offence will not apply to individuals who purchase the tobacco product for personal use (clause 32);
- package tobacco products for retail sale in packaging that does not comply with the plain packaging requirements (clause 33);
- manufacture non-compliant containers or wrappers for retail packaging, if another person places tobacco products in the packaging (clause 34);
- manufacture a tobacco product and arrange for that product to be packaged, if the retail packaging is non-compliant, unless the manufacturer has taken all reasonable steps to ensure the packaging complies with the plain packaging requirements (clause 35); or to
- sell or otherwise supply a tobacco product that is not in retail packaging (for example, a sale of the product in bulk), whether or not payment is required, given or accepted, without the supplier having a contractual arrangement in place that prohibits the purchaser from supplying the product in Australia in non-compliant retail packaging (clause 36).

Division 2 – Non-compliant tobacco products

This Division sets out the general offences for conduct relating to non-compliant tobacco products. The clauses provide that it will be an offence to:

- sell, offer or otherwise supply a non-compliant tobacco product (clause 37);
- purchase a non-compliant tobacco product, other than for personal use (clause 38); or to
- manufacture a tobacco product that does not comply with the requirements of the Bill and any associated regulations (clause 39).

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

To ensure the broadest possible support by the corporations power, the offences in this Part apply to conduct already dealt with in Part 1 of Chapter 3, but are restricted to dealings with constitutional corporations.

Division 1 – Non-compliant retail packaging of tobacco products

The clauses in this Division replicate the offences relating to non-compliant packaging of tobacco products generally in Part 2, Division 1, of this Chapter, with reference to dealings with constitutional corporations. The clauses provide that it will be an offence to:

- sell, offer or otherwise supply a tobacco product which is packaged for retail sale in non-compliant packaging, to a constitutional corporation (clause 40);

- purchase a tobacco product which has been packaged for retail sale and does not comply with plain-packaging requirements, from a constitutional corporation, other than for personal use (clause 41);
- package a tobacco product for retail sale, under a contract with a constitutional corporation, if the packaging does not comply with plain packaging requirements (clause 42);
- manufacture non-compliant retail packaging, under a contract with a constitutional corporation, if another person places tobacco products in the packaging (clause 43);
- package a tobacco product if the trade mark, brand, business or company name, or other identifying mark of a constitutional corporation appears on the packaging and the retail packaging does not comply with plain packaging requirements (clause 44);
- manufacture non-compliant containers or wrappers as retail packaging of tobacco products, if the trade mark, brand, business or company name, or other identifying mark of a constitutional corporation appears on the packaging, and another person places tobacco products in the packaging (clause 45); or to
- sell, offer or otherwise supply a tobacco product that is not packaged for retail sale to another person, without a contract that prevents the purchaser from supplying the product for retail sale in non-compliant packaging, where either the seller or purchaser is a constitutional corporation (clause 46).

Division 2 – Non-compliant tobacco products

The clauses in this Division replicate the offences relating to non-compliant tobacco products generally in Part 2, Division 2 of this Chapter, with reference to dealings with constitutional corporations. The clauses provide that it will be an offence to:

- sell, offer or otherwise supply a tobacco product that does not comply with plain packaging requirements, to a constitutional corporation (clause 47);
- purchase a tobacco product that does not comply with plain packaging requirements from a constitutional corporation, other than for personal use (clause 48).

Part 4 – Export exception and physical elements of offences

Clause 49 - Export exception for non-compliant tobacco products

This clause provides a broad exception to the offences in sections 31 to 48, (other than the offences in sections 36 and 46, relating to supplying unpackaged tobacco products without a contract prohibiting non-compliant packaging of those products) for conduct that is undertaken in the course of, or for the purposes of, exporting the tobacco products. This exception applies only if a contract, arrangement or understanding for the tobacco product to be exported exists.

To enable the effective operation of the offences, this exception does not apply to retail sale of a tobacco product in Australia. Retail sales at an airport to departing travellers will not fall within the exception, for example. Neither will the Bill allow a retailer to sell non-compliant products to customers who assure the retailer that they intend to take the products out of the country. The availability of the exception in such cases would make enforcement of the legislation difficult, and make it easier for the prohibitions in the Bill to be circumvented. Also, an exception for retail sales to

individuals leaving the country temporarily would leave open the possibility of significant amounts of non-compliant packaging and non-compliant products being within Australia. As well as making monitoring and enforcement more difficult, this may undermine the aim of restricting exposure of persons in Australia to promotion of smoking in the form of design features on packages and products.

Clause 50 - Physical elements of offences

This clause clarifies that, for each offence set out in Chapter 3, the physical elements of the offence are set out in subsection (1) of the relevant section, rather than in the sub-sections titled *Fault-based offence*. This information is provided to aid in the application of Chapter 2 of the *Criminal Code*, which relates to general principles of criminal responsibility, to the offences provided by the Bill.

CHAPTER 4 – POWERS TO INVESTIGATE CONTRAVENTIONS OF THIS ACT

This Chapter deals with the powers of officers who are authorised to investigate suspected contraventions of the legislation. Chapter 4 creates a regime under which warrants to search premises and seize evidence may be issued, and certain authorised officers may be appointed to execute warrants, in order to enforce the requirements of the Bill. The regime includes the ability to enter and search premises with a warrant, and to seize evidence to support investigation of suspected offences or contraventions of civil penalty provisions. The provisions of the Bill empower authorised officers to ask questions, and to seek production of documents.

This Chapter also contains safeguards and obligations to which authorised officers must adhere when exercising their powers. This includes that authorised officers must provide warrant details to occupiers of premises, and must announce themselves before entering premises. The occupiers of premises which are entered and searched will also have responsibilities under the legislation. The legislation requires seized items to be handled in a particular way, and provides for the circumstances in which seized items will be returned to their owner.

Provisions in this Chapter are consistent with Part 9 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Power*.

Part 1 – Simplified outline

Part 1 (clause 51) provides a simplified outline of Chapter 4 to aid in understanding of the relevant clauses.

Part 2 – Search warrants

Division 1 – Search powers

This Division sets out the search powers that may be exercised by authorised officers, or persons assisting them, in the execution of a warrant or when entering premises with consent.

Clause 52 - Authorised officer may enter premises by consent or under a warrant

This clause provides that a person appointed by the Secretary of the relevant Department under section 81 can enter and search premises, when they have reasonable grounds to believe there is evidence on the premises, if they gain consent from the occupier of the premises or if they have a warrant allowing them to enter without permission.

Clause 53 - Search powers of authorised officers

This clause outlines the search powers that can be used by an authorised officer to enforce the Act.

If an authorised officer enters premises after gaining consent from the occupier, they may search the premises and anything on the premises that they suspect on reasonable grounds may provide evidential material. This clause is more limited than the powers granted under a search warrant, to ensure that proper procedure is followed when enforcing the legislation.

If an authorised officer enters premises under a warrant, they must act in compliance with the terms of the warrant. This means they can search the premises for types of evidence that are specified in the warrant, and seize any such evidence that is found.

Other powers that authorised officers may exercise include:

- powers to inspect, examine, measure, conduct tests on, or take samples of, evidential material;
- powers to take photographs or video recordings (or other records) of the premises and any evidence; and
- powers to take any equipment and materials needed by the authorised officer onto the premises.

Clause 54 - Powers relating to electronic equipment

This clause provides additional search powers to those outlined in clause 53, in relation to electronic equipment. The clause provides the powers to:

- operate electronic equipment if there are reasonable grounds for suspicion that the equipment or a related storage device (such as a CD, DVD, or USB) contains evidence;
- put the evidential material in documentary form, for example by printing the evidence, and remove the documents from the premises;
- transfer the evidence to a storage device that the authorised officer brought to the premises, or to a storage device that the occupier of the premises agrees in writing may be used to store the evidence and be removed from the property; and
- seize the equipment or storage device, if the authorised officer is acting under a warrant, but only if:
 - it is not practical to put the evidence into documentary form or transfer it to another storage device that may be taken from the premises; or
 - possession of the equipment or the storage device could constitute an offence against another Commonwealth law.

To protect the property of individuals, the authorised officer's actions are limited to operation of the electronic equipment where they believe on reasonable grounds that the equipment won't be damaged.

Clause 55 - Seizing other evidential material

This clause provides clarification of the power to seize evidential material from premises, as outlined in section 53.

Unless provided for separately, or allowed to be taken with the permission of the occupier, 'things' may be seized from premises only when entry is under a warrant, and the following requirements are also met:

- the 'thing' is found in the course of searching for evidential material, as set out in the warrant; and
- the authorised officer believes on reasonable grounds that:
 - the 'thing' is evidential material; and
 - if the 'thing' is not seized at that time, it would be concealed, lost or destroyed.

Clause 56 - Persons assisting authorised officers

This clause provides that if it is necessary and reasonable, authorised officers may be assisted by other people when performing their functions and duties. Someone who helps an authorised officer in the exercise of their functions and duties is described as a ‘person assisting’ the authorised officer.

A person who assists an authorised officer can enter premises and act in all of the roles of an authorised officer, including exercise of powers and performance of functions and duties in relation to evidence, but can only do so when instructed or directed by an authorised officer.

Clause 56(5) provides that if a written direction is given to a person assisting in writing, that direction is not a legislative instrument. This provision is declaratory and not intended as an exemption to the *Legislative Instruments Act 2003*, but is included to assist readers in interpretation of the Bill.

Clause 57 – Use of force in executing a warrant

This clause provides that an authorised officer or a person assisting them may use force in executing a warrant. The use of force allowed by an authorised officer is only to be exercised against things and not persons, for example in order to open a door or force a lock. The force allowed is limited to that which is necessary and reasonable in the circumstances.

Division 2 – Powers of authorised officers to ask questions and seek production of documents

Clause 58 – Authorised officer may ask questions and seek production of documents

This clause outlines the extent of an authorised officer’s powers to ask questions and seek production of documents. It makes it an offence not to comply with a request to answer a question or produce a document that is made by an authorised officer who enters premises with a warrant.

If an authorised officer enters premises with the occupier’s permission, the authorised officer is permitted to ask the occupier to answer questions and produce documents that relate to the authorised officer’s reasons for entering the premises. However, as the authorised officer’s right to be present on the premises is based on the consent of the occupier, it is not an offence to refuse to comply with an authorised officer’s request.

If the authorised officer enters premises under a warrant, they may require any person on the premises to answer any questions or produce any documents that relate to the authorised officer’s reasons for entering the premises. A person who fails to comply with any such request will have committed an offence.

Under clause 83, when an authorised officer who enters premises under a warrant requires answers or documents, a person is not excused from giving the requested information on the grounds that the information might tend to incriminate the person. The reasons for this are given below in the explanation of clause 83.

Division 3 – Obligations and incidental powers of authorised officers

This Division sets out the obligations of authorised officers, and clarifies the operation of the warrant provisions in relation to a number of circumstances that may arise during the execution of a warrant.

Clause 59 – Consent

This clause outlines the conditions that apply when an occupier of premises gives consent to an authorised officer seeking to enter and search the premises without a warrant.

The authorised officer must tell the occupier that they may refuse consent, and must not coerce the occupier into giving consent, as the consent has no effect unless it is voluntary. The occupier can limit their consent to a particular period.

The authorised officer and anyone assisting them can enter the premises until a consent period ends, or until consent is withdrawn. They must leave once consent is withdrawn or, if consent is given for a particular period of time, at the end of that time. If consent is given without any limitations, it will continue to have effect until it is withdrawn.

Clause 60 – Announcement before entry under warrant

This clause outlines what an authorised officer must do before entering premises under a warrant. The authorised officer must:

- announce that they are authorised to enter the premises ;
- show their identity card to the occupier or to anyone else who represents the occupier, if they are present; and
- give the occupier or their representative an opportunity to allow entry to the premises.

If the authorised officer believes on reasonable grounds that the safety of a person or the effective execution of the warrant can not be ensured if they comply with these requirements, they need not comply. However, if the authorised officer enters premises without complying with the normal requirements then they are required to show the occupier their identity card as soon as practicable after entering the premises.

Clause 61 – Authorised officer to be in possession of warrant

This clause provides that the authorised officer who is executing the warrant must have the warrant or the form of warrant in their possession when they enter premises.

Clause 62 – Details of warrant etc. to be given to occupier

This clause provides that when a warrant is executed on premises and the occupier or their representative is present, the authorised officer is required to give the occupier or their representative a copy of the warrant (or the form of warrant) and inform the occupier of their rights and responsibilities.

Clause 63 – Completing execution of warrant after temporary cessation

This clause provides that, when an authorised officer and persons assisting them to execute a warrant leave the premises temporarily, the authorised officer can only complete the execution of the warrant if they are absent from the premises for no more than one hour, or if they are absent from the premises for no more than 12 hours due to an emergency, or if the occupier gives written consent.

However, the authorised officer can apply to an issuing officer for extension of the 12 hour period if there is an emergency situation and the authorised officer will not be able to return to the premises for more than 12 hours. Where practicable, the authorised officer must notify the occupier of the premises that they intend to apply for the extension before doing so.

On request, an issuing officer can permit the extension if they are satisfied that there are exceptional circumstances, but only when the extension will operate within the period the warrant is in force.

Clause 64 – Completing execution of warrant stopped by court order

This clause provides that if the execution of a warrant is stopped by an order of the Court, the execution can go ahead if the Court order is later revoked or reversed and the warrant is still in force at that time.

Clause 65 – Expert assistance to operate electronic equipment

This clause applies to situations where expert assistance is required to operate electronic equipment that an authorised officer believes on reasonable grounds may contain evidence; and the evidence may be destroyed, altered or otherwise interfered with if it is not retrieved.

This clause provides that an authorised officer may secure the electronic equipment for up to 24 hours, after giving the occupier or a representative notice of their intention to do so. The equipment may only be secured until the expert has operated the equipment, but may not be secured for more than 24 hours.

The authorised officer may apply to an issuing officer for an extension to secure the electronic equipment for more than 24 hours, but must give notice to the occupier or a representative of their intention to do so. This is so that the occupier or representative has an opportunity to challenge the application.

Clause 66 – Compensation for damage to electronic equipment

This clause provides that if insufficient care by the authorised officer or persons assisting causes damage to electronic equipment or to the data and programs on the electronic equipment, during the course of the equipment being operated, the Commonwealth must pay reasonable compensation to the owner or user, as agreed.

If the Commonwealth and the owner of the equipment, data or programs fail to agree, the owner may take proceedings in a court to gain reasonable compensation.

Division 4 – Occupier’s rights and responsibilities

This Division sets out the rights and responsibilities that are applicable to the occupier of premises that are searched.

Clause 67 – Occupier entitled to observe execution of warrant

This clause provides that an occupier or their representative may remain and observe the execution of a warrant, as long as they do not impede the execution of the warrant.

Clause 68 – Occupier to provide authorised officer with facilities and assistance

This clause provides that it is an offence for the occupier or their representative to fail to provide all reasonable assistance to effectively exercise their powers and perform their functions and duties.

Division 5 – General provisions relating to seizure

The clauses in this Division address the conduct that may be undertaken in relation to items that are seized, including circumstances in which copies and receipts must be provided for seized goods, and circumstances in which items must be returned.

Clause 69 – Copies of seized things to be provided

This clause provides that where an authorised officer, while executing a warrant, seizes anything that can be readily copied, or a storage device that contains information that can be readily copied, the occupier or a person representing them can request a copy of the seized information or items. Unless possession of the information or the item would constitute an offence against a Commonwealth law, the authorised officer must provide copies to the occupier or their representative as soon as practicable.

Clause 70 – Receipts for seized things

This clause requires that an authorised officer provide a receipt for items that are seized under a search warrant.

Clause 71 – Return of seized things

This clause requires the Secretary of the relevant Department to take reasonable steps to return any seized items to the owner or the person they were seized from after 60 days, or sooner than 60 days when the reason for the seizure no longer exists or it is decided that the item will not be used in evidence. If proceedings are instituted and not completed before the 60 days the item does not need to be returned until the reason for the seizure no longer exists or it is decided the item will not be used in evidence.

However, the item does not need to be returned when a court order requires otherwise, if the item is forfeited or forfeitable to the Commonwealth, or when there is a dispute about the ownership of the item.

This provision is designed to be consistent with the principles discussed in Part 9.9 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. The retention period of 60 days is specified in order to ensure that seized goods are not held for long periods of time without good reason.

Clause 72 – Issuing officer may permit a seized thing to be retained

This clause provides that the Secretary of the relevant Department may apply to an issuing officer for an extension of the period for retention of seized goods, if the goods need to be kept.

On application from the Secretary, an issuing officer can permit a seized item to be kept for the purposes of legal proceedings that have not started if it is necessary that it be retained for the purposes of investigation or proceedings. The issuing officer can specify that the item be kept for a further period, but no longer than three years. Before making an application, the Secretary must attempt to find and notify each person who has an interest in the retention of the item.

Clause 73 – Disposal of seized things

This clause provides that the Secretary of the relevant Department can dispose of any thing that has been seized in any way they think appropriate, once they have taken reasonable steps to return the item and either the person refused to take possession of the item, or the Secretary was unable to locate the person.

Clause 74 – Compensation for acquisition of property

This section provides that if disposal of an item by the Secretary of the relevant Department under clause 73 would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

The person may institute proceedings in a court if the Commonwealth and the person do not agree on the amount of compensation.

Division 6 – Issue of warrants

This Division outlines the criteria and circumstances that must be met for a warrant to be issued.

Clause 75 – Issue of warrants

For a warrant to be issued in relation to premises, an authorised officer must apply to an issuing officer for a warrant. The issuing officer may only issue the warrant if they are satisfied that there are reasonable grounds for suspecting that there is evidential material on the premises, or will be within the next 72 hours.

This provision also outlines certain information that a warrant must contain.

Clause 76 – Warrants by telephone, fax etc.

This provision sets out a procedure under which an authorised officer can apply for a warrant by telephone, fax or other electronic means in an urgent case, or if the delay to make an application in person would frustrate the effective execution of the warrant.

Under this provision, the requirement for the authorised officer to prepare evidence and information to support the issuing of a warrant is preserved, including the requirement that there are reasonable grounds for suspecting that there is evidential material on the premises, or that there may be within 72 hours. The authorised officer may be required to give this evidence by telephone or other voice technology if it is practicable.

The issuing officer can complete and sign a warrant, and must inform the authorised officer of that either by telephone, fax or other electronic means. The authorised officer must then complete a form of warrant in the terms that are communicated to them, and include the name of the issuing officer and the time the original warrant was signed. The authorised officer must also send a copy of the form of warrant to the issuing officer by the end of the day following the day the warrant is executed or ceases to be in force.

Where the word ‘sign’ is used in this clause, it is used as a verb and has its plain English meaning.

Clause 77 – Authority of warrant

This clause provides that where a form of warrant is completed as a result of a warrant issued by electronic means, a proper form of warrant gives authority for the same powers as would be given by the warrant signed by the issuing officer. However, if the warrant signed by the issuing officer is not produced in evidence in court proceedings, the court cannot assume the powers were authorised because of a form of warrant, unless it is otherwise proven that the powers were authorised.

Clause 78 – Offence relating to warrants by telephone, fax etc.

This clause provides that it is an offence for an authorised officer to falsely state the name of an issuing officer as having signed a warrant, or to depart from the terms of the warrant signed by the issuing officer. It is also an offence to execute or present a form of warrant that departs from the terms of a warrant signed by an issuing officer, or to give to an issuing officer a form of warrant that is not the form of warrant used to execute a search.

The penalty for any of the above conduct is imprisonment for two years. This penalty is in place to deter authorised officers from false or improper execution of warrants.

Division 7 – Powers of issuing officers**Clause 79 – Powers of issuing officers**

This clause provides that an issuing officer may consent to have powers conferred on them, and the Attorney-General may nominate consenting officers to exercise those powers.

The clause specifies that powers conferred on issuing officers are conferred on the individual issuing officer in his or her personal capacity.

Issuing officers who are Judges or Federal Magistrates exercising a power personally have the same protection and immunity as the court, and as a member of the court to which they belong. Issuing officers who are members of the Administrative Appeals Tribunal have the same protection and immunity as a Justice of the High Court.

Powers to issue warrants are conferred on the relevant classes of people, that is, Judges of a court created by the Parliament, Federal Magistrates, Deputy Presidents of the Administrative Appeals Tribunal (AAT), or a non-presidential member of the AAT with particular legal qualifications and experience, to ensure that warrants are issued with due rigour and independence. Members of the AAT are included to provide as many options as possible to ensure warrants can be issued without undue difficulty or delay.

Part 3 – Power to require persons to give information, produce documents or answer questions**Clause 80 – Power to require persons to give information, produce documents or answer questions**

If an authorised officer has reason to believe that a person has information or a document that is relevant to the administration or enforcement of the requirements of the Bill, the authorised officer has power under this clause to give the person written notice, requiring them to give information, produce a document or answer questions.

The clause specifies that if the written notice is to provide information or a document, it must specify a period of at least 14 days in which the person is required to comply. If the notice is to require the person to appear before a specified authorised officer, it must specify a time and place at which the person must appear. The written notice must advise the person that they commit an offence if they fail to comply with the notice.

The authorised officer may require the information provided to be verified or given on oath or affirmation, and may administer the oath or affirmation.

Part 4 - Miscellaneous

Clause 81 – Appointment of authorised officers

This clause allows the Secretary of the relevant Department to appoint people to assist in enforcing the legislation, including by exercising powers (other than the powers of issuing officers) under Chapter 4, Part 2.

It confers power on the Secretary to appoint a Commonwealth public servant or a member of the Australian Federal Police (AFP) who has suitable qualifications, training or experience, as an authorised officer for the purposes of the legislation. The flexibility to confer the powers of authorised officers, including entry search and seizure powers upon persons other than the AFP is provided to avoid the need for dependence on the availability of AFP resources – which may be limited – and to ensure a stable workforce can be maintained for the purpose of monitoring and enforcement of the Bill. Specialist training of Australian Public Service officers will enable them to perform investigation and enforcement functions in a way that is appropriate.

Clause 82 – Identity cards

This clause requires the Secretary of the relevant Department to issue an identity card to authorised officers. The identity card must incorporate photo identification of the authorised officer, and the authorised officer is required to carry the identity card when carrying out their duties under the provisions of the Bill.

A person commits an offence if they do not return their identity card to the issuing office within 14 days after ceasing to be an authorised officer.

This section is designed to ensure that only properly appointed authorised officers exercise powers and perform the functions of authorised officers, and that authorised officers are accountable for performing the actions appropriate to their role. It is also designed to ensure that authorised officers are properly and easily identified.

Clause 83 – Self-incrimination

This clause provides that a person cannot refuse to provide information sought under sections 58(2) or 80(2) on the basis that it might tend to incriminate them.

However, this clause does protect the person giving the information from having that information used against them in criminal proceedings.

The partial abrogation of the privilege against self-incrimination addresses the public policy need to require information being provided by a reliable, knowledgeable source. It is justifiable because the type of information that might be requested from a tobacco company would not be obtainable other than from representatives of that company, or people who engage in dealings with them. As the offences created by the Bill are intended to capture nearly all participants in the supply chain for tobacco products and their retail packaging, anyone who may have, or have access to, the information needed to prosecute an offence against other participants in the supply chain, may have committed an offence in dealing with those products.

The protection of the privilege against self incrimination would otherwise seriously compromise the investigation and enforcement of offences, and would mean that retailers of tobacco products would unfairly bear the burden of compliance with the requirements of the Bill, as they are the most readily accessible point for monitoring and enforcement. Requiring the provision of information will ensure that evidence which will enable identification of persons who engage in conduct at an earlier point in the supply chain of non-compliant products will also be available.

CHAPTER 5 – ENFORCING COMPLIANCE WITH THIS ACT

This Chapter sets out the means, other than criminal offences, through which compliance with the requirements of the Bill may be enforced. It establishes the schemes by which civil penalty provisions may be enforced through applications for civil penalty orders, and how infringement notices may be given.

Part 1 – Simplified outline

Part 1 (clause 84) provides a simplified outline of Chapter 5 to aid in understanding of the relevant clauses.

Part 2 – Civil penalty provisions

Division 1 – Obtaining a civil penalty order

This Division sets out the conditions under which civil penalty orders may be sought and enforced for contravention of a civil penalty provision.

Clause 85 – Civil penalty orders

This clause provides that within six years of an alleged contravention of the provisions of this Bill, the Secretary of the relevant Department may apply to the Federal Court for an order that a person who is alleged to have contravened a civil penalty provision of this Act pay a pecuniary penalty.

Pecuniary penalties in this legislation are limited to no more than 2,000 penalty units for individuals and 10,000 penalty units for bodies corporate. In determining which penalty to apply, the court may take into account various factors including the nature and extent of contraventions and any loss or damage suffered as a result, the circumstances in which the contravention occurred, and past findings in relation to similar conduct under the provisions of this Bill or under the *Crimes Act 1914* or the *Criminal Code* in relation to this Bill.

Clause 86 – Civil enforcement of penalty

This clause provides that a pecuniary penalty is a debt due to the Commonwealth. If a Court orders payment of a civil penalty, the Commonwealth may enforce the order.

Clause 87 – Conduct contravening more than one civil penalty provision

This clause provides that where conduct contravenes two or more civil penalty provisions, proceedings may be instituted against any of those provisions but the person will only be liable for one pecuniary penalty in relation to the same conduct.

Clause 88 – Multiple contraventions

This clause provides that the Federal Court can make one civil penalty order for multiple contraventions of a civil penalty provision, if each of the contraventions are founded on the same facts or form a series of contraventions of the same or similar character. The penalty in this case cannot be greater than the maximum total penalty that could be ordered if a separate civil penalty order were made for each contravention.

Clause 89 – Proceedings may be heard together

This clause provides that the Federal Court can direct that more than one civil penalty proceeding be heard at the same time. Doing so may be in the interest of efficient use of the Court’s time. This might be done, for example, where the proceedings involve alleged contraventions by different parties in the supply chain in relation to particular non-compliant tobacco products.

Clause 90 – Civil evidence and procedure rules for civil penalty orders

This clause provides that the rules of evidence and procedure for civil matters apply to any proceedings for a civil penalty order in the Federal Court.

Clause 91 – Contravening a civil penalty provision is not an offence

This clause clarifies that a contravention of a civil penalty provision is not an offence. That is, it is distinct from provisions that may result in criminal prosecution.

Division 2 – Civil proceedings and criminal proceedings

This Division explains and clarifies the interaction between proceedings for civil penalty orders and criminal proceedings, in relation to the same conduct.

As stated above in relation to Chapter 3, the Commonwealth will decide in each particular case whether to prosecute a person for a fault-based or strict-liability offence, or whether to bring proceedings for a civil penalty order. A person will not be prosecuted for both a fault-based and a strict liability offence, but only one, and once convicted of a criminal (fault-based or strict liability) offence a person could not be pursued for civil penalties. However, proceedings for a contravention of a civil penalty provision could be brought prior to a person being prosecuted for a criminal offence.

Clause 92 – Civil proceedings after criminal proceedings

This clause provides that where a person is convicted of a criminal offence for conduct under this Act, the Federal Court cannot make a civil penalty order for conduct that is the same or substantially the same.

Clause 93 – Criminal proceedings during civil proceedings

This clause provides that, if criminal proceedings are underway or commence for an offence under this Act, any proceedings for a civil penalty order against the same person and in relation to conduct that is the same or substantially the same, are stayed. The civil penalty proceedings can be resumed if the person is not convicted of the criminal offence.

Clause 94 – Criminal proceedings after civil proceedings

This clause clarifies that criminal proceedings may be commenced regardless of whether a civil penalty order has been made against the same person for the same or substantially the same conduct.

Clause 95 – Evidence given in civil proceedings not admissible in criminal proceedings

This clause provides that evidence given by an individual in civil penalty proceedings against them for conduct that is the same or substantially the same cannot be used in criminal proceedings.

This clause does not apply in relation to criminal proceedings pursued for the falsity of any evidence given by the individual during civil penalty proceedings.

Division 3 – Miscellaneous

This Division sets out miscellaneous matters which are relevant in relation to civil penalty provisions.

Clause 96 – Ancillary contravention of civil penalty provisions

This clause provides that anyone who:

- attempts to contravene a civil penalty provision;
- aids in, procures or induces a contravention;
- is knowingly concerned in a contravention of a civil penalty; or
- conspires with others to cause a contravention

will be taken to have contravened the provision.

Clause 97 – Mistake of fact

This clause provides that a person will not be liable for a penalty if they can show that they were under a mistaken but reasonable belief about the facts surrounding a contravention, and if the correct understanding of the facts would not have led to a contravention.

For clarification, this clause provides that the circumstances include where a person reasonably believes the circumstances in the present situation to be the same as those in a past situation which did not constitute a contravention.

This clause requires a person to prove their own mistake of fact on the balance of probabilities. This is because the defendant in civil penalty proceedings will be much better placed to present evidence about their state of mind with respect to having a mistaken belief.

Clause 98 – State of mind

This clause provides that it is not necessary to prove a person's intention, knowledge, recklessness, negligence or any other state of mind in order to prove a contravention of a civil penalty provision, other than in relation to section 96(1). However, this clause does not affect the operation of section 97.

Clause 99 – Civil penalty provisions contravened by employees, agents or officers

This clause provides that a body corporate will be held responsible for elements of civil penalty provisions that are contravened by the employees, agents or officers of the body corporate, if those people are acting within the scope of their employment or authority at the time of the contravention.

Part 3 – Infringement notices

This Part establishes that an authorised officer can give infringement notices when they have reasonable grounds to believe a person has contravened a strict liability offence. This scheme is designed to encourage compliance with the legislative requirements for minor or first infringements, without resorting to criminal prosecution or civil penalty proceedings. Alleged major and repeat infringements of the plain packaging requirements may be pursued through the courts.

The infringement notice scheme is drafted consistently with the requirements of Part 6 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Officers*.

The amount of an infringement notice penalty for an individual is 12 penalty units, (currently \$1,320) and for a body corporate is 60 penalty units (currently \$6,600). The penalty for infringement notices is not designed to be a financial penalty to tobacco industry participants, but is intended to serve as a warning that the plain packaging requirements have been breached and court action could be taken. Infringement notices are intended to mitigate the burden of compliance on retailers as a result of the relative ease of monitoring and enforcement at the point of retail sale. Infringement notices will allow enforcement officers to recognise situations in which retailers have relatively little control over non-compliant products supplied to them, whilst still deterring ongoing non-compliance. As such, the infringement notice penalty amount is significantly lower than the amount recommended by *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Officer*, which would be one-fifth of the maximum penalty amount. Instead, the penalty is set at one-fifth of the penalty amount for the strict liability offences, and is the recommended maximum amount for infringement notice penalties.

An infringement notice may be issued for non-compliance with the requirements of the Bill or any regulations, as an alternative to criminal prosecution or civil penalty provisions. Failure to pay the amount specified in an infringement notice may lead to criminal prosecution or civil penalty proceedings.

Clause 100 – When an infringement notice may be given

This clause provides that an authorised officer can give an infringement notice when they reasonably suspect a person has committed a strict liability offence under the Act. Each of the offences in Chapter 3 has a corresponding strict liability offence. The infringement notice must be given within 12 months after the day on which the offence is allegedly committed and can only relate to a single contravention of a single offence provision. The requirement that notices must be issued within 12 months of the alleged offence is included so that recipients have a reasonable chance to defend the allegations if charged. It is anticipated that infringement notices will usually be given very soon after the day the contravention is alleged to have occurred. This is because infringement notices are intended to serve principally as a warning that plain packaging requirements have been breached. Serious offences will be pursued through the Courts, and will not be remedied using infringement notices.

Clause 101 – Matters to be included in an infringement notice

This clause sets out matters that must be included in an infringement notice. These matters include information that will help to identify the particular infringement notice, the relevant authorised officer, the person the infringement notice is issued to, and the circumstances of the infringement. Other information that is required includes details about the recipient's rights in dealing with the infringement notice including how and when to pay, avenues to appeal the notice, and circumstances when the notice might be withdrawn.

Clause 102 – Extension of time to pay amount

This clause provides that the recipient of an infringement notice may apply to the Secretary of the relevant Department for an extension to pay an infringement notice penalty, and the Secretary may grant an extension at their discretion as many times as they see fit. If the Secretary does not grant the extension, the recipient will still have at least seven days to pay the penalty, following notice of the Secretary's decision.

A decision made by the Secretary under this clause is not reviewable by an external merits review, as the decision to issue an infringement notice itself is not subject to external merits review, and the Secretary's decision is not a final determination of rights.

Clause 103– Withdrawal of an infringement notice

This clause provides that a person can make representations in writing, requesting that the Secretary of the relevant Department withdraw an infringement notice.

The Secretary may withdraw an infringement notice at his or her discretion, whether or not the person has made written representations. In making that decision, the Secretary must take into account the applicant's written representations (if any), and may also consider other factors including the circumstances of the alleged contravention, any prior contraventions and/or convictions and any other matter considered relevant.

The person must be advised in writing of any withdrawal, with a withdrawal notice that includes details which will identify the person and the infringement notice. The withdrawal notice must state that proceedings may be instituted against the individual. If a penalty has already been paid under the notice, it must be refunded.

A decision made by the Secretary under this clause is not reviewable by an external merits review, as the decision to issue an infringement notice itself is not subject to external merits review, and the Secretary's decision is not a final determination of rights.

Clause 104 – Effect of payment of amount

This clause provides that if a person pays the amount of an infringement notice penalty and the infringement notice is not withdrawn, then any liability for the offence is discharged. No proceedings, whether criminal or civil, may be brought against the person for the same conduct. Payment of the infringement notice penalty is not considered as admission of guilt by the person, and the person is not regarded as having committed an offence.

Clause 105 – Effect of this Part

This clause clarifies the effect of requirements under Chapter 5, Part 3 for infringement notices, in order to ensure compliance with part 6 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

In particular, this clause provides that infringement notices are not required for any alleged contravention of an offence, and are issued at the discretion of the authorised officer.

It also provides that the availability of infringement notices does not affect the liability of a person for alleged contraventions of an offence, unless they pay the infringement notice penalty. In particular, if a person is not given an infringement notice, or if they are given a notice but they do not comply with it or it is subsequently withdrawn, their liability for an alleged contravention is not affected. The availability of infringement notices does not limit a court's discretion in setting penalty amounts if a person is found to have contravened an offence.

In addition, no part of the infringement notice scheme limits the amount of infringement notices that may be given to a person. Nothing prevents an authorised officer from giving a person two or more infringement notices, for two or more alleged offences.

CHAPTER 6 – MISCELLANEOUS PROVISIONS

This chapter sets out miscellaneous provisions that are necessary to ensure appropriate transparency and effective operation of the legislation.

Part 1 – Simplified outline

Part 1 (clause 106) provides a simplified outline of Chapter 7 to aid in understanding of the relevant clauses.

Part 2 – Miscellaneous provisions

Clause 107 – Delegation

This clause provides that the Secretary of the relevant Department may delegate some or all of his or her powers under this legislation to an employee who is a member of the Senior Executive Service in the relevant Department.

Clause 108 – Reports to Parliament

This clause requires the preparation of a report on the number of contraventions occurring in each financial year and actions taken in relation to each contravention.

The report must be provided to the Minister of the relevant Portfolio, and must be included in the Annual Report of the Department for each financial year.

Clause 109 – Regulations

This clause provides a general regulation making power that will permit the Governor-General to make regulations required or permitted by the Act, or necessary or convenient to give effect to the Act. For example, this clause will ensure that regulations can be made to provide a temporary exemption for the requirements of the Bill from the *Trans Tasman Mutual Recognition Arrangement*, to ensure that the Bill will operate effectively.