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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Tobacco Plain Packaging Bill 2011

No. , 2011

(Health and Ageing)

**A Bill for an Act to discourage the use of tobacco
products, and for related purposes**

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1 **A Bill for an Act to discourage the use of tobacco**
2 **products, and for related purposes**

3 The Parliament of Australia enacts:

4 **Chapter 1—Preliminary**

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Tobacco Plain Packaging Act 2011*.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 29	1 January 2012.	1 January 2012
3. Sections 30 to 32	1 July 2012.	1 July 2012
4. Sections 33 to 36	20 May 2012.	20 May 2012
5. Sections 37 and 38	1 July 2012.	1 July 2012
6. Section 39	20 May 2012.	20 May 2012
7. Sections 40 and 41	1 July 2012.	1 July 2012
8. Sections 42 to 46	20 May 2012.	20 May 2012
9. Sections 47 and 48	1 July 2012.	1 July 2012
10. Sections 49 to 80	20 May 2012.	20 May 2012
11. Sections 81 and 82	1 January 2012.	1 January 2012
12. Sections 83 to 105	20 May 2012.	20 May 2012

Section 3

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
13. Sections 106 to 109	1 January 2012.	1 January 2012

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

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

7 **3 Objects of this Act**

- 8 (1) The objects of this Act are:
- 9 (a) to improve public health by:
- 10 (i) discouraging people from taking up smoking, or using
11 tobacco products; and
- 12 (ii) encouraging people to give up smoking, and to stop
13 using tobacco products; and
- 14 (iii) discouraging people who have given up smoking, or
15 who have stopped using tobacco products, from
16 relapsing; and
- 17 (iv) reducing people's exposure to smoke from tobacco
18 products; and
- 19 (b) to give effect to certain obligations that Australia has as a
20 party to the Convention on Tobacco Control.
- 21 (2) It is the intention of the Parliament to contribute to achieving the
22 objects in subsection (1) by regulating the retail packaging and
23 appearance of tobacco products in order to:
- 24 (a) reduce the appeal of tobacco products to consumers; and
- 25 (b) increase the effectiveness of health warnings on the retail
26 packaging of tobacco products; and
- 27 (c) reduce the ability of the retail packaging of tobacco products
28 to mislead consumers about the harmful effects of smoking
29 or using tobacco products.
-

Section 4

1 **4 Definitions**

2 (1) In this Act:

3 **acquisition of property** has the same meaning as in paragraph
4 51(xxxi) of the Constitution.

5 **Australia** includes all the external Territories.

6 **authorised officer** means a person appointed under section 81 as
7 an authorised officer.

8 **cigarette** means a roll of cut tobacco for smoking, enclosed in
9 paper.

10 **cigarette carton** means any container for retail sale that contains
11 smaller containers in which cigarettes are directly placed.

12 Note: See also the definition of *container*.

13 **cigarette pack** means any container for retail sale in which
14 cigarettes are directly placed.

15 Note: See also the definition of *container*.

16 **civil penalty order** has the meaning given by section 85.

17 **civil penalty provision** (other than in paragraph 11(2)(b)) means a
18 provision of this Act if:

19 (a) either:

20 (i) the provision sets out at its foot a pecuniary penalty, or
21 penalties, indicated by the words “Civil penalty”; or

22 (ii) another provision of this Act provides that the provision
23 is a civil penalty provision; and

24 (b) the provision is a subsection, or a section that is not divided
25 into subsections.

26 Note: See section 7 for references to contraventions of civil penalty
27 provisions.

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

30 **constitutional trade or commerce** means:

- 1 (a) trade or commerce between Australia and places outside
2 Australia; or
3 (b) trade or commerce among the States; or
4 (c) trade or commerce within a Territory, between a State and a
5 Territory or between 2 Territories.

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

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

10 Note: The text of the Convention is set out in Australian Treaty Series 2005
11 No. 7 ([2005] ATS 7). In 2011, the text of a Convention in the
12 Australian Treaty Series was accessible through the Australian
13 Treaties Library on the AustLII website (www.austlii.edu.au).

14 **Deputy President** of the Administrative Appeals Tribunal has the
15 meaning given by section 3 of the *Administrative Appeals Tribunal*
16 *Act 1975*.

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

20 **evidential material** means:

- 21 (a) in respect of an offence against this Act:
22 (i) any thing with respect to which the offence has been
23 committed or is suspected, on reasonable grounds, to
24 have been committed; or
25 (ii) any thing as to which there are reasonable grounds for
26 suspecting that it will afford evidence as to the
27 commission of the offence; or
28 (iii) any thing as to which there are reasonable grounds for
29 suspecting that it is intended to be used for the purpose
30 of committing the offence; and
31 (b) in respect of a contravention of a civil penalty provision:
32 (i) any thing with respect to which the civil penalty
33 provision has been contravened or is suspected, on
34 reasonable grounds, of having been contravened; or

Section 4

- 1 (ii) any thing as to which there are reasonable grounds for
2 suspecting that it will afford evidence as to the
3 contravention of the civil penalty provision; or
4 (iii) any thing as to which there are reasonable grounds for
5 suspecting that it is intended to be used for the purpose
6 of contravening the civil penalty provision.

7 **Federal Court** means the Federal Court of Australia.

8 **filter tip** of a cigarette means the part of the end of the cigarette
9 that acts as a filter, or purports to act as a filter.

10 **fire risk statement** means any statement that is required to
11 appear on the retail packaging of tobacco products by:

- 12 (a) regulation 14 of the *Trade Practices (Consumer Product*
13 *Safety Standard) (Reduced Fire Risk Cigarettes) Regulations*
14 *2008*; or
15 (b) a safety standard made under section 104, or declared under
16 section 105, of Schedule 2 to the *Competition and Consumer*
17 *Act 2010*, to the extent that the standard relates to fire risk; or
18 (c) an information standard made under section 134, or declared
19 under section 135, of Schedule 2 to the *Competition and*
20 *Consumer Act 2010*, to the extent that the standard relates to
21 fire risk.

22 **health warning** means any message, information, graphic or other
23 thing that is required to appear on the retail packaging of tobacco
24 products by:

- 25 (a) the *Trade Practices (Consumer Product Information*
26 *Standards) (Tobacco) Regulations 2004*; or
27 (b) a safety standard made under section 104, or declared under
28 section 105, of Schedule 2 to the *Competition and Consumer*
29 *Act 2010*, to the extent that the standard relates to the health
30 effects of smoking or using tobacco products; or
31 (c) an information standard made under section 134, or declared
32 under section 135, of Schedule 2 to the *Competition and*
33 *Consumer Act 2010*, to the extent that the standard relates to
34 the health effects of smoking or using tobacco products.

Section 4

1 **imitation cork tip** of a cigarette means the part of the paper over
2 the filter tip of the cigarette that is printed brown to resemble
3 cork.

4 **inner surface** of a cigarette carton has a meaning affected by
5 subsection 6(2).

6 **insert** means any thing (other than a tobacco product) placed inside
7 packaging (within the ordinary meaning of the word), but does not
8 include the lining of a cigarette pack if the lining complies with the
9 requirements of this Act.

10 **inside lip** of a cigarette pack means the part of the outer surfaces
11 of the pack that is obscured when the flip-top lid is closed.

12 **issuing officer** means:

- 13 (a) a Judge of a court created by the Parliament; or
14 (b) a Federal Magistrate; or
15 (c) a Deputy President of the Administrative Appeals Tribunal;
16 or
17 (d) a non-presidential member of the Administrative Appeals
18 Tribunal who:
19 (i) is enrolled as a legal practitioner of the High Court, or
20 the Supreme Court of a State or Territory; and
21 (ii) has been so enrolled for at least 5 years.

22 **just terms** has the same meaning as in paragraph 51(xxxi) of the
23 Constitution.

24 **mark**:

- 25 (a) includes (without limitation) any line, letters, numbers,
26 symbol, graphic or image; but
27 (b) (other than when referring to a trade mark) does not include a
28 trade mark.

29 **measurement mark** means any information that is required to
30 appear on the retail packaging of tobacco products by
31 regulations made under the *National Measurement Act 1960*.

Section 4

1 ***non-presidential member*** of the Administrative Appeals Tribunal
2 has the meaning given by section 3 of the *Administrative Appeals*
3 *Tribunal Act 1975*.

4 ***offer*** a tobacco product for sale has a meaning affected by
5 subsection (2) of this section.

6 ***onsert*** means any thing affixed or otherwise attached to packaging
7 (within the ordinary meaning of the word), but does not include the
8 lining of a cigarette pack if the lining complies with the
9 requirements of this Act.

10 Note: A sound chip embedded in the cardboard of a cigarette pack is an
11 example of an onsert.

12 ***outer surface*** of a cigarette pack has a meaning affected by
13 subsection 6(1).

14 ***package*** a tobacco product for retail sale has the meaning given by
15 section 5.

16 ***person assisting*** has the meaning given by section 56.

17 ***relevant legislative requirement*** means any of the following:

- 18 (a) a health warning;
19 (b) a fire risk statement;
20 (c) a trade description;
21 (d) a measurement mark.

22 ***relevant tobacco law*** has the meaning given by section 11.

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

- 24 (a) any container for retail sale in which the tobacco product is
25 directly placed; or
26 (b) any container for retail sale that contains a smaller container
27 in which the tobacco product is directly placed; or
28 (c) any plastic or other wrapper that covers any retail packaging
29 of the tobacco product (within the meaning of paragraph (a)
30 or (b) of this definition); or
31 (d) any plastic or other wrapper that covers the tobacco product,
32 being a tobacco product that is for retail sale; or

Section 4

- 1 (e) any insert that is placed inside the retail packaging of the
2 tobacco product (within the meaning of any of paragraphs (a)
3 to (d) of this definition); or
4 (f) any onsert that is affixed or otherwise attached to the retail
5 packaging of the tobacco product (within the meaning of any
6 of paragraphs (a) to (d) of this definition).

7 Note: See also the definition of *container*.

8 ***search powers*** has the meaning given by sections 53, 54 and 55.

9 ***Secretary*** means the Secretary of the Department.

10 ***sign*** (when used as a noun) has the meaning given by subsection
11 6(1) of the *Trade Marks Act 1995*.

12 ***this Act*** includes the regulations.

13 ***tobacco advertising and promotion*** has the meaning given by the
14 Convention on Tobacco Control.

15 ***tobacco product*** means processed tobacco, or any product that
16 contains tobacco, that:

- 17 (a) is manufactured to be used for smoking, sucking, chewing or
18 snuffing; and
19 (b) is not included in the Australian Register of Therapeutic
20 Goods maintained under the *Therapeutic Goods Act 1989*.

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

24 ***tobacco product requirement*** means the following requirements in
25 relation to the retail packaging or appearance of tobacco products:

- 26 (a) a requirement specified in Part 2 of Chapter 2;
27 (b) a requirement prescribed by regulations made under Part 2 of
28 Chapter 2;
29 (c) if subsection 15(2) applies (acquisition of property)—a
30 requirement prescribed by regulations made under section 15.

31 ***trade description*** means any trade description that is required to
32 appear on the retail packaging of tobacco products by

Section 5

1 regulations made under the *Commerce (Trade Descriptions) Act*
2 *1905*.

3 **variant name** for a tobacco product means the name used to
4 distinguish that kind of tobacco product from other tobacco
5 products that are supplied under the same brand, business or
6 company name, by reference to one or more of the following:

- 7 (a) containing or not containing menthol;
8 (b) being otherwise differently flavoured;
9 (c) purporting to differ in strength;
10 (d) having or not having filter tips or imitation cork tips;
11 (e) being of different length or mass.

12 **warrant** means:

- 13 (a) a warrant issued by an issuing officer under section 75; or
14 (b) a warrant signed by an issuing officer under section 76.

15 (2) In this Act, a reference to offering a tobacco product for sale
16 includes (without limitation) a reference to:

- 17 (a) exposing, displaying or advertising the product for sale; and
18 (b) making the product available for sale even if the product is
19 not visible to the public.

20 **5 Definition of *package* a tobacco product for retail sale**

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

- 22 (a) the person places the tobacco product directly into a
23 container for retail sale; or
24 (b) the person places a container, in which the tobacco product
25 has been directly placed, into a larger container for retail sale;
26 or
27 (c) the person covers the retail packaging of the tobacco product
28 (within the meaning of paragraph (a) or (b) of the definition
29 of **retail packaging**) with a plastic or other wrapper; or
30 (d) the person covers the tobacco product, being a tobacco
31 product that is for retail sale, with a plastic or other wrapper;
32 or

- 1 (e) the person places an insert inside the retail packaging of the
2 tobacco product (within the meaning of any of paragraphs (a)
3 to (d) of the definition of *retail packaging*); or
4 (f) the person affixes or otherwise attaches an insert to the retail
5 packaging of the tobacco product (within the meaning of any
6 paragraphs (a) to (d) of the definition of *retail packaging*).

7 Note 1: See also the definition of *container*.

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

11 **6 Rules relating to surfaces of cigarette packs and cigarette cartons**

12 *Surfaces of cigarette packs*

- 13 (1) A reference in this Act to an outer surface of a cigarette pack (such
14 as the front outer surface) is a reference to all of that outer surface,
15 including the part of that outer surface that forms part of the
16 flip-top lid.

17 *Surfaces of cigarette cartons*

- 18 (2) If a cigarette carton has one or more flaps with surfaces that
19 become visible only when the carton is opened, those surfaces are
20 taken to be inner surfaces of the carton.

21 **7 References to contraventions of civil penalty provisions**

- 22 (1) For the purposes of this Act, if:
23 (a) a provision of this Act refers to:
24 (i) a contravention of a civil penalty provision; or
25 (ii) a person contravening a civil penalty provision; and
26 (b) the civil penalty provision is in a section in Chapter 3;
27 the reference includes a reference to a contravention of, or a person
28 contravening, subsection (1) of that section.
- 29 (2) Subsection (1) of this section does not apply to section 91
30 (contravening a civil penalty provision is not an offence).

Section 8

1 **8 Act extends to external Territories**

2 This Act extends to all the external Territories.

3 **9 Act binds the Crown**

4 (1) This Act binds the Crown in right of the Commonwealth, of each
5 of the States, of the Australian Capital Territory, of the Northern
6 Territory and of Norfolk Island.

7 (2) This Act does not make the Crown liable to be:

- 8 (a) prosecuted for an offence; or
9 (b) subject to civil proceedings for a civil penalty order; or
10 (c) given an infringement notice.

11 **10 Inconsistency with other Commonwealth legislation**

12 The following prevail to the extent of any inconsistency with this
13 Act:

- 14 (a) the *Trade Practices (Consumer Product Information*
15 *Standards) (Tobacco) Regulations 2004*;
16 (b) a safety standard made under section 104, or declared under
17 section 105, of Schedule 2 to the *Competition and Consumer*
18 *Act 2010*, to the extent that the standard relates to the health
19 effects of smoking or using tobacco products;
20 (c) an information standard made under section 134, or declared
21 under section 135, of Schedule 2 to the *Competition and*
22 *Consumer Act 2010*, to the extent that the standard relates to
23 the health effects of smoking or using tobacco products.

24 **11 Operation of State and Territory laws**

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

28 (2) This Act does not exclude or limit the application of a relevant
29 tobacco law of a State or Territory to particular conduct if:

Section 11

- 1 (a) that conduct constitutes an offence against, or a contravention
2 of a civil penalty provision in, this Act; and
3 (b) that conduct also constitutes an offence against, or a
4 contravention of a civil penalty provision (however
5 described) in, the relevant tobacco law.
- 6 (3) In this Act:
- 7 ***relevant tobacco law*** means a law, or a provision of a law, that
8 regulates the retail packaging or appearance of tobacco products.
9

Section 12

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2 **Part 2—Simplified outlines**
3

4 **12 Simplified outline for this Act**

5 The following is a simplified outline of this Act:

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- This Act regulates the retail packaging and appearance of tobacco products in order to:
 - (a) improve public health; and
 - (b) give effect to certain obligations in the Convention on Tobacco Control.
 - Part 2 of Chapter 2 specifies requirements for the retail packaging and appearance of tobacco products. (If there is an acquisition of property otherwise than on just terms, regulations made under section 15 might also specify requirements.)
 - The retail packaging and appearance of tobacco products must comply with the requirements of this Act.
 - Offences and civil penalties apply if tobacco products are supplied, purchased or manufactured and either the retail packaging, or the products themselves, do not comply with the requirements.

22 **13 Simplified outline for this Chapter**

23 The following is a simplified outline of this Chapter:

- 24
- 25
- Part 1 of this Chapter contains definitions and general rules about the operation of this Act.

Section 13

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- Part 3 of this Chapter contains provisions relating to the constitutional basis of this Act.
- This Act relies on the external affairs power of the Constitution by implementing certain obligations in the Convention on Tobacco Control. However, if this Act is not supported by that power, then this Act will apply in more limited circumstances by relying on the corporations power, the trade and commerce power and the Territories power.
- This Act does not apply to the extent that its operation would infringe certain constitutional protections (such as by acquiring property otherwise than on just terms).

Section 14

1

2 **Part 3—Constitutional provisions**

3

4 **14 Additional operation of this Act**

5 (1) Without prejudice to its effect apart from this section, this Act also
6 has effect as provided by this section.

7 *Corporations power*

8 (2) Part 2 of Chapter 3 has, by force of this subsection, the effect it
9 would have if its operation were, by express provision, confined to
10 a person that is a constitutional corporation.

11 Note: Part 2 of Chapter 3 contains general offences and civil penalty
12 provisions for non-compliant retail packaging and tobacco products.

13 *Trade and commerce power*

14 (3) Part 2 of Chapter 3 has, by force of this subsection, the effect it
15 would have if its operation were, by express provision, confined to
16 a person engaging in conduct to the extent to which the conduct
17 takes place in the course of, or in relation to, constitutional trade or
18 commerce.

19 (4) Subsection (3) does not apply to the extent (if any) that its
20 application would infringe section 92 of the Constitution.

21 Note: Section 92 of the Constitution requires trade among the States to be
22 absolutely free.

23 *Territories power*

24 (5) Part 2 of Chapter 3 has, by force of this subsection, the effect it
25 would have if its operation were, by express provision, confined to
26 a person engaging in conduct to the extent to which the conduct
27 takes place wholly or partly in a Territory.

1 **15 Acquisition of property**

2 (1) This Act does not apply to the extent (if any) that its operation
3 would result in an acquisition of property from a person otherwise
4 than on just terms.

5 (2) In particular, if, apart from this section, this Act would result in
6 such an acquisition of property because it would prevent the use of
7 a trade mark or other sign on or in relation to the retail packaging
8 of tobacco products, or on tobacco products, then despite any other
9 provision of this Act, the trade mark or sign may be used on or in
10 relation to the retail packaging of tobacco products, or on tobacco
11 products, subject to any requirements that may be prescribed in the
12 regulations for the purposes of this subsection.

13 Note: Offences and civil penalties apply to the supply, purchase and
14 manufacture etc. of tobacco products that do not comply with any
15 requirements specified in the regulations (see Chapter 3).

16 (3) To avoid doubt, any tobacco product requirement (within the
17 meaning of paragraph (a) or (b) of the definition of ***tobacco***
18 ***product requirement***) that does not result in such an acquisition of
19 property continues to apply in relation to:

- 20 (a) the retail packaging of tobacco products; and
21 (b) the appearance of tobacco products.

22 **16 Implied freedom of political communication**

23 This Act does not apply to the extent (if any) that it would infringe
24 any constitutional doctrine of implied freedom of political
25 communication.
26

Section 17

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2 **Chapter 2—Requirements for plain**
3 **packaging and appearance of tobacco**
4 **products**

5 **Part 1—Simplified outline**
6

7 **17 Simplified outline**

8 The following is a simplified outline of this Chapter:

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- Part 2 of this Chapter specifies requirements for the retail packaging and appearance of tobacco products.
 - Offences and civil penalties in Chapter 3 apply in certain circumstances if retail packaging or tobacco products do not comply with the requirements.
 - Division 1 of Part 2 sets out requirements for:
 - (a) the physical features of retail packaging; and
 - (b) the colour and finish of retail packaging; and
 - (c) marks on retail packaging (including a prohibition on trade marks generally appearing on retail packaging); and
 - (d) wrappers; and
 - (e) retail packaging after retail sale.
 - Division 2 of Part 2 also prohibits trade marks from generally appearing on the tobacco products themselves.

Section 17

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- Division 3 of Part 2 allows additional regulations to be made in relation to the retail packaging and appearance of tobacco products. That Division also sets out the relationship between this Act, the *Trade Marks Act 1995* and the *Designs Act 2003*.

Section 18

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2 **Part 2—Requirements for retail packaging and**
3 **appearance of tobacco products**

4 **Division 1—Requirements for retail packaging of tobacco**
5 **products**

6 **18 Physical features of retail packaging**

7 *Retail packaging of all tobacco products*

- 8 (1) The retail packaging of tobacco products must comply with the
9 following requirements:
- 10 (a) the outer surfaces and inner surfaces of the packaging must
11 not have any decorative ridges, embossing, bulges or other
12 irregularities of shape or texture, or any other
13 embellishments, other than as permitted by the regulations;
 - 14 (b) any glues or other adhesives used in manufacturing the
15 packaging must be transparent and not coloured.

16 *Cigarette packs and cigarette cartons*

- 17 (2) A cigarette pack or cigarette carton must comply with the
18 following requirements:
- 19 (a) the pack or carton must be rigid and made of cardboard, and
20 only cardboard (subject to paragraphs (1)(b) and (3)(d));
 - 21 (b) when the pack or carton is closed:
 - 22 (i) each outer surface of the pack or carton must be
23 rectangular; and
 - 24 (ii) the surfaces of the pack or carton must meet at firm 90
25 degree angles;
 - 26 (c) all edges of the pack or carton must be rigid, straight and not
27 rounded, bevelled or otherwise shaped or embellished in any
28 way, other than as permitted by the regulations.
- 29 (3) A cigarette pack must comply with the following requirements:

- 1 (a) the dimensions of the pack must comply with the
2 requirements prescribed by the regulations;
3 (b) the only opening to the pack must be a flip-top lid which
4 must:
5 (i) be hinged only at the back of the pack; and
6 (ii) have straight edges;
7 and neither the lid, nor the edges of the lid, may be rounded,
8 bevelled or otherwise shaped or embellished in any way;
9 (c) the inside lip of the cigarette pack must have straight edges,
10 and neither the lip, nor the edges of the lip, may be rounded,
11 bevelled or otherwise shaped or embellished in any way;
12 (d) if the pack contains lining—the lining of the pack must be
13 made only of foil backed with paper, or any other material
14 prescribed by the regulations.

15 **19 Colour and finish of retail packaging**

- 16 (1) This section applies to the following things:
17 (a) all outer surfaces and inner surfaces of the retail packaging of
18 tobacco products (within the meaning of paragraph (a) or (b)
19 of the definition of *retail packaging*);
20 (b) both sides of any lining of a cigarette pack.
- 21 Note: For the requirements for wrappers, inserts and onserts, see sections 22
22 and 23.
- 23 (2) The things mentioned in subsection (1):
24 (a) must have a matt finish; and
25 (b) except as provided by subsection (3):
26 (i) if regulations are in force prescribing a colour—must be
27 that colour; and
28 (ii) otherwise—must be drab dark brown.
- 29 (3) The following are not required to be the colour mentioned in
30 paragraph (2)(b):
31 (a) the health warnings;
32 (b) the text of:
33 (i) the brand, business or company name, or variant name
34 (if any), for the tobacco products; and
-

Section 20

- 1 (ii) the relevant legislative requirements (other than the
2 health warnings).

3 Note: The regulations might require the brand, business, company or variant
4 name, or a relevant legislative requirement, to be a particular colour.

5 **20 Prohibition on trade marks and marks generally appearing on**
6 **retail packaging**

7 *No trade marks*

- 8 (1) No trade mark may appear anywhere on the retail packaging of
9 tobacco products, other than as permitted by subsection (3).

10 Note: This section does not apply to wrappers (see subsection (4)).

11 *No marks*

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

14 Note: For the definition of *mark*, see section 4.

15 *Permitted trade marks and marks*

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

- 18 (a) the brand, business or company name for the tobacco
19 products, and any variant name for the tobacco products;
20 (b) the relevant legislative requirements;
21 (c) any other trade mark or mark permitted by the regulations.

22 Note: For requirements for brand, business, company or variant names, and
23 relevant legislative requirements, see section 21.

24 *Section not to apply to wrappers*

- 25 (4) This section does not apply to a plastic or other wrapper that
26 covers:

- 27 (a) the retail packaging of tobacco products; or
28 (b) a tobacco product that is for retail sale.

29 Note: For the requirements for wrappers, see section 22.

1 **21 Requirements for brand, business, company or variant names,**
2 **and relevant legislative requirements**

3 *Requirements for brand, business, company or variant name—*
4 *general*

- 5 (1) Any brand, business or company name, or any variant name, for
6 tobacco products that appears on the retail packaging of those
7 products must comply with any requirements prescribed by the
8 regulations.

9 Note: This section does not apply to wrappers (see subsection (5)).

10 *Requirements for brand, business, company or variant name—*
11 *cigarette packs and cigarette cartons*

- 12 (2) Any brand, business or company name, or any variant name, for
13 cigarettes that appears on a cigarette pack or cigarette carton:
14 (a) must not obscure any relevant legislative requirement; and
15 (b) must not appear more than once on any of the following outer
16 surfaces of the pack or carton:
17 (i) for a cigarette pack—the front, top and bottom outer
18 surfaces of the pack;
19 (ii) for a cigarette carton—the front outer surface of the
20 carton, and the 2 smallest outer surfaces of the carton;
21 and
22 (c) may appear only on the surfaces mentioned in paragraph (b);
23 and
24 (d) must appear across one line only; and
25 (e) must comply with the requirements in the table in
26 subsection (3).

- 27 (3) The following table has effect:
28

Requirements for brand, business, company or variant names			
Item	If this name ...	appears on this	the name ...
		surface ...	
1	a brand, business or company name	the front outer surface of a	must appear: (a) horizontally below, and in the

Chapter 2 Requirements for plain packaging and appearance of tobacco products

Part 2 Requirements for retail packaging and appearance of tobacco products

Division 1 Requirements for retail packaging of tobacco products

Section 21

Requirements for brand, business, company or variant names

Item	If this name ...	appears on this surface ...	the name ...
		cigarette pack	same orientation as, the health warning; and (b) in the centre of the space remaining on the front outer surface beneath the health warning.
2	a brand, business or company name	the front outer surface of a cigarette carton	must appear: (a) in the same orientation as the health warning; and (b) in the centre of the space on the front outer surface that is not occupied by the health warning.
3	a brand, business or company name	any outer surface of a cigarette pack or cigarette carton (other than a front outer surface)	must appear: (a) horizontally; and (b) in the centre of the outer surface of the pack or carton.
4	variant name	any outer surface of a cigarette pack or cigarette carton	must appear: (a) horizontally and immediately below the brand, business or company name; and (b) in the same orientation as the brand, business or company name.

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Requirements for relevant legislative requirements (other than health warnings)

(4) Any relevant legislative requirement (other than the health warnings) must comply with any requirements prescribed by the regulations.

1 *Section not to apply to wrappers*

- 2 (5) This section does not apply to a plastic or other wrapper that
3 covers:
4 (a) the retail packaging of tobacco products; or
5 (b) a tobacco product that is for retail sale.

6 Note: For the requirements for wrappers, see section 22.

7 **22 Requirements for wrappers**

- 8 (1) This section sets out the requirements that a plastic or other
9 wrapper must comply with if the wrapper covers:
10 (a) the retail packaging of tobacco products (within the meaning
11 of paragraph (a) or (b) of the definition of *retail packaging*);
12 or
13 (b) a tobacco product that is for retail sale.
- 14 (2) For the purposes of subsection (1), the wrapper must comply with
15 the following requirements:
16 (a) the wrapper must be transparent and not coloured, marked,
17 textured or embellished in any way, other than as permitted
18 by the regulations;
19 (b) no trade mark may appear anywhere on the wrapper, other
20 than as permitted by the regulations;
21 (c) no mark may appear anywhere on the wrapper, other than as
22 permitted by the regulations.

23 **23 Retail packaging not to have inserts or onserts**

24 The retail packaging of tobacco products (within the meaning of
25 any of paragraphs (a) to (d) of the definition of *retail packaging*)
26 must not have any inserts or onserts, other than as permitted by the
27 regulations.

28 **24 Retail packaging not to produce noise or scent**

29 No part of the retail packaging of tobacco products may make a
30 noise, or contain or produce a scent, that could be taken to
31 constitute tobacco advertising and promotion.

Section 25

1 Note: For the definition of *tobacco advertising and promotion*, see
2 section 4.

3 **25 Retail packaging must not change after retail sale**

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

- 7 (a) heat activated inks;
 - 8 (b) inks or embellishments designed to appear gradually over
9 time;
 - 10 (c) inks that appear fluorescent in certain light;
 - 11 (d) panels designed to be scratched or rubbed to reveal an image
12 or text;
 - 13 (e) removable tabs;
 - 14 (f) fold-out panels.
- 15

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2 **Division 2—Requirements for appearance of tobacco**
3 **products**

4 **26 Requirements for appearance of tobacco products**

5 (1) No trade mark may appear anywhere on a tobacco product, other
6 than as permitted by the regulations.

7 (2) No mark may appear anywhere on a tobacco product, other than as
8 permitted by the regulations.

9 Note: For the definition of *mark*, see section 4.
10

Section 27

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2 **Division 3—Miscellaneous**

3 **27 Regulations may prescribe additional requirements**

4 (1) To further the objects of this Act, the regulations may prescribe
5 additional requirements in relation to:

- 6 (a) the retail packaging of tobacco products; and
7 (b) the appearance of tobacco products.

8 Note 1: The objects of this Act are set out in section 3.

9 Note 2: Offences and civil penalties apply to the supply, purchase and
10 manufacture etc. of tobacco products that do not comply with the
11 requirements (see Chapter 3).

12 (2) Divisions 1 and 2 of this Part do not limit subsection (1).

13 **28 Effect on the *Trade Marks Act 1995* of non-use of trade mark as a**
14 **result of this Act**

15 (1) For the purposes of the *Trade Marks Act 1995*, and regulations
16 made under that Act, an applicant for the registration of a trade
17 mark in respect of tobacco products is taken to intend to:

- 18 (a) use the trade mark in Australia in relation to those products;
19 or
20 (b) authorise another person to use the trade mark in Australia in
21 relation to those products; or
22 (c) assign the trade mark to a body corporate that is about to be
23 constituted with a view to the body corporate using the trade
24 mark in Australia in relation to those products;

25 if the applicant would intend to do so but for the operation of this
26 Act.

27 (2) To avoid doubt, for the purposes of paragraph 42(b) of the *Trade*
28 *Marks Act 1995*, this Act does not have the effect that the use of a
29 trade mark in relation to tobacco products would be contrary to
30 law.

- 1 (3) To avoid doubt, for the purposes of sections 38 and 84A of the
2 *Trade Marks Act 1995*, and regulations 17A.27 and 17A.42A of
3 the *Trade Marks Regulations 1995*:
4 (a) the operation of this Act; or
5 (b) the circumstance that a person is prevented, by or under this
6 Act, from using a trade mark on or in relation to the retail
7 packaging of tobacco products, or on tobacco products;
8 are not circumstances that make it reasonable or appropriate:
9 (c) not to register the trade mark; or
10 (d) to revoke the acceptance of an application for registration of
11 the trade mark; or
12 (e) to register the trade mark subject to conditions or limitations;
13 or
14 (f) to revoke the registration of the trade mark.
- 15 (4) For the purposes of paragraph 100(1)(c) of the *Trade Marks Act*
16 *1995*, an opponent is taken to have rebutted an allegation if the
17 opponent establishes that the registered owner would have used the
18 trade mark in Australia on or in relation to the retail packaging of
19 tobacco products, or on tobacco products, but for the operation of
20 this Act.
- 21 *Trade Marks regulations applying provisions of Trade Marks Act*
- 22 (5) Subsections (1) to (4) also apply in relation to regulations made
23 under the *Trade Marks Act 1995* that:
24 (a) apply provisions of the *Trade Marks Act 1995* that are
25 affected by this section, including where the regulations
26 apply those provisions in modified form; and
27 (b) provide in similar terms to provisions of the *Trade Marks Act*
28 *1995* that are affected by this section.

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

31 A failure to make a product that embodies a registered design
32 merely as a result of complying with the requirements of this Act
33 does not provide the basis for making an order:

Chapter 2 Requirements for plain packaging and appearance of tobacco products

Part 2 Requirements for retail packaging and appearance of tobacco products

Division 3 Miscellaneous

Section 29

- 1 (a) under section 90 of the *Designs Act 2003*, requiring the grant
2 of a licence in relation to the design; nor
3 (b) under section 92 of that Act, revoking the registration of the
4 design.

1
2 **Chapter 3—Offences and civil penalty**
3 **provisions**

4 **Part 1—Simplified outline**
5

6 **30 Simplified outline**

7 The following is a simplified outline of this Chapter:

- 8
- 9 • A person must not:
 - 10 (a) supply or purchase tobacco products in retail
11 packaging that does not comply with the
12 requirements of this Act; nor
 - 13 (b) be involved in the packaging of tobacco products
14 for retail sale if the packaging does not comply
15 with those requirements; nor
 - 16 (c) supply, purchase or manufacture tobacco products
17 that do not comply with those requirements; nor
 - 18 (d) supply tobacco products that are not packaged for
19 retail sale without certain contractual prohibitions.
 - 20 • A person who does so:
 - 21 (a) may commit a fault-based offence (that is, an
22 offence where fault elements apply to the physical
23 elements of the offence); and
 - 24 (b) may also commit a strict liability offence (that is,
25 an offence where no fault elements apply to the
26 physical elements of the offence); and
 - (c) may also contravene a civil penalty provision.

Section 30

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- It is up to the Commonwealth to decide whether to prosecute a person for one of the offences or bring proceedings in relation to the contravention of the civil penalty provision. (Division 2 of Part 2 of Chapter 5 has rules about bringing civil proceedings and criminal proceedings.)
- Part 3 of this Chapter contains specific offences and civil penalty provisions in relation to constitutional corporations (for example, supplying non-compliant tobacco products to constitutional corporations).
- Part 4 of this Chapter creates an exception to some of the offences and civil penalty provisions in this Chapter for non-compliant tobacco products that are for export. That Part also clarifies what the physical elements of offences are in this Chapter.

1

2 **Part 2—General offences and civil penalty**
3 **provisions for non-compliant retail**
4 **packaging and tobacco products**

5 **Division 1—Non-compliant retail packaging of tobacco**
6 **products**

7 **31 Selling or supplying tobacco products in non-compliant retail**
8 **packaging**

- 9 (1) A person contravenes this subsection if:
10 (a) the person:
11 (i) sells a tobacco product; or
12 (ii) offers a tobacco product for sale; or
13 (iii) otherwise supplies (whether or not for consideration) a
14 tobacco product; and
15 (b) at the time the product is sold, offered for sale, or otherwise
16 supplied, the product has been packaged for retail sale; and
17 (c) the retail packaging does not comply with a tobacco product
18 requirement.

19 Note 1: There is an exception to this subsection in section 49 (non-compliant
20 tobacco products for export).

21 Note 2: See subsection 4(2) for an extended meaning of *offer*.

22 *Fault-based offence*

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

25 Penalty: 2,000 penalty units.

26 Note: See section 50 in relation to the physical elements of the offence.

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

Chapter 3 Offences and civil penalty provisions

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

Section 32

1 Note: For strict liability in relation to a physical element of an offence, see
2 subsection 6.1(2) of the *Criminal Code*.

3 *Strict liability offence*

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

6 Penalty: 60 penalty units.

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

9 *Civil penalty provision*

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

12 Civil penalty: 2,000 penalty units.

13 Note: It is not necessary to prove a person's state of mind in proceedings for
14 a contravention of a civil penalty provision, except in limited
15 circumstances (see section 98).

16 **32 Purchasing tobacco products in non-compliant retail packaging**

17 (1) A person contravenes this subsection if:
18 (a) the person purchases a tobacco product; and
19 (b) at the time the product is purchased, the product has been
20 packaged for retail sale; and
21 (c) the retail packaging does not comply with a tobacco product
22 requirement.

23 (2) Subsection (1) does not apply to an individual who purchases the
24 tobacco product for his or her personal use.

25 Note: There is another exception to subsection (1) in section 49
26 (non-compliant tobacco products for export).

27 *Fault-based offence*

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

1 Penalty: 2,000 penalty units.

2 Note 1: See section 50 in relation to the physical elements of the offence.

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

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

7 Note: For strict liability in relation to a physical element of an offence, see
8 subsection 6.1(2) of the *Criminal Code*.

9 *Strict liability offence*

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

12 Penalty: 60 penalty units.

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

15 Note 2: A defendant bears an evidential burden in relation to the matter in
16 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

17 *Civil penalty provision*

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

20 Civil penalty: 2,000 penalty units.

21 Note: It is not necessary to prove a person's state of mind in proceedings for
22 a contravention of a civil penalty provision, except in limited
23 circumstances (see section 98).

24 (7) A person who wishes to rely on subsection (2) in proceedings for a
25 civil penalty order bears an evidential burden in relation to the
26 matter in that subsection.

27 **33 Packaging tobacco products in non-compliant retail packaging**

28 (1) A person contravenes this subsection if:

29 (a) the person packages a tobacco product for retail sale; and

Chapter 3 Offences and civil penalty provisions

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

Section 34

1 (b) the retail packaging does not comply with a tobacco product
2 requirement.

3 Note: There is an exception to this subsection in section 49 (non-compliant
4 tobacco products for export).

5 *Fault-based offence*

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

8 Penalty: 2,000 penalty units.

9 Note: See section 50 in relation to the physical elements of the offence.

10 (3) For the purposes of subsection (2), strict liability applies to the
11 element of the offence that the tobacco product is packaged for
12 retail sale.

13 Note: For strict liability in relation to a physical element of an offence, see
14 subsection 6.1(2) of the *Criminal Code*.

15 *Strict liability offence*

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

18 Penalty: 60 penalty units.

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

21 *Civil penalty provision*

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

24 Civil penalty: 2,000 penalty units.

25 Note: It is not necessary to prove a person's state of mind in proceedings for
26 a contravention of a civil penalty provision, except in limited
27 circumstances (see section 98).

1 **34 Manufacturing non-compliant retail packaging of tobacco**
2 **products**

- 3 (1) A person contravenes this subsection if:
- 4 (a) the person manufactures any of the following retail
5 packaging of tobacco products:
- 6 (i) a container for retail sale;
- 7 (ii) a container for retail sale that contains or will contain
8 smaller containers;
- 9 (iii) a plastic or other wrapper that covers or will cover a
10 container or containers for retail sale;
- 11 (iv) a plastic or other wrapper that covers or will cover a
12 tobacco product that is for retail sale; and
- 13 (b) a tobacco product is packaged for retail sale in the retail
14 packaging by another person; and
- 15 (c) the retail packaging does not comply with a tobacco product
16 requirement.

17 Note: There is an exception to this subsection in section 49 (non-compliant
18 tobacco products for export).

19 *Fault-based offence*

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

22 Penalty: 2,000 penalty units.

23 Note: See section 50 in relation to the physical elements of the offence.

- 24 (3) For the purposes of subsection (2), strict liability applies to the
25 element of the offence that the packaging is retail packaging.

26 Note: For strict liability in relation to a physical element of an offence, see
27 subsection 6.1(2) of the *Criminal Code*.

28 *Strict liability offence*

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

31 Penalty: 60 penalty units.

Chapter 3 Offences and civil penalty provisions

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

Section 35

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

3 *Civil penalty provision*

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

6 Civil penalty: 2,000 penalty units.

7 Note: It is not necessary to prove a person's state of mind in proceedings for
8 a contravention of a civil penalty provision, except in limited
9 circumstances (see section 98).

10 **35 Manufacturing tobacco products that are packaged in**
11 **non-compliant retail packaging**

12 (1) A person contravenes this subsection if:

13 (a) the person (the *manufacturer*) manufactures a tobacco
14 product; and

15 (b) the manufacturer enters into a contract or arrangement, or
16 arrives at an understanding, for another person to package the
17 tobacco product for retail sale; and

18 (c) the tobacco product is packaged for retail sale by the other
19 person; and

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

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

25 Note: There is another exception to subsection (1) in section 49
26 (non-compliant tobacco products for export).

27 *Fault-based offence*

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

30 Penalty: 2,000 penalty units.

31 Note 1: See section 50 in relation to the physical elements of the offence.

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

3 *Strict liability offence*

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

6 Penalty: 60 penalty units.

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

9 Note 2: A defendant bears an evidential burden in relation to the matter in
10 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

11 *Civil penalty provision*

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

14 Civil penalty: 2,000 penalty units.

15 Note: It is not necessary to prove a person's state of mind in proceedings for
16 a contravention of a civil penalty provision, except in limited
17 circumstances (see section 98).

18 (6) A person who wishes to rely on subsection (2) in proceedings for a
19 civil penalty order bears an evidential burden in relation to the
20 matter in that subsection.

21 **36 Certain supplies of tobacco products that have not been packaged**
22 **for retail sale**

23 (1) A person contravenes this subsection if:

24 (a) the person:

25 (i) sells a tobacco product; or

26 (ii) otherwise supplies (whether or not for consideration) a
27 tobacco product;

28 to another person (the *purchaser*); and

29 (b) the product is not packaged for retail sale; and

30 (c) at the time of the supply, the person does not have a contract
31 with the purchaser that prohibits the purchaser from

Chapter 3 Offences and civil penalty provisions

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

Section 36

1 supplying the product in Australia in retail packaging that
2 does not comply with the tobacco product requirements.

3 (2) To avoid doubt, the contract may allow the purchaser to supply the
4 tobacco product without having packaged the product for retail
5 sale.

6 *Fault-based offence*

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

9 Penalty: 2,000 penalty units.

10 Note: See section 50 in relation to the physical elements of the offence.

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

13 Note: For strict liability in relation to a physical element of an offence, see
14 subsection 6.1(2) of the *Criminal Code*.

15 *Strict liability offence*

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

18 Penalty: 60 penalty units.

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

21 *Civil penalty provision*

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

24 Civil penalty: 2,000 penalty units.

25 Note: It is not necessary to prove a person's state of mind in proceedings for
26 a contravention of a civil penalty provision, except in limited
27 circumstances (see section 98).
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2 **Division 2—Non-compliant tobacco products**

3 **37 Selling or supplying non-compliant tobacco products**

4 (1) A person contravenes this subsection if:

5 (a) the person:

6 (i) sells a tobacco product; or

7 (ii) offers a tobacco product for sale; or

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

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

12 Note 1: There is an exception to this subsection in section 49 (non-compliant
13 tobacco products for export).

14 Note 2: See subsection 4(2) for an extended meaning of *offer*.

15 *Fault-based offence*

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

18 Penalty: 2,000 penalty units.

19 Note: See section 50 in relation to the physical elements of the offence.

20 *Strict liability offence*

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

23 Penalty: 60 penalty units.

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

26 *Civil penalty provision*

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

Chapter 3 Offences and civil penalty provisions

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

Division 2 Non-compliant tobacco products

Section 38

1 Civil penalty: 2,000 penalty units.

2 Note: It is not necessary to prove a person's state of mind in proceedings for
3 a contravention of a civil penalty provision, except in limited
4 circumstances (see section 98).

5 **38 Purchasing non-compliant tobacco products**

6 (1) A person contravenes this subsection if:

- 7 (a) the person purchases a tobacco product; and
8 (b) the product does not comply with a tobacco product
9 requirement.

10 (2) Subsection (1) does not apply to an individual who purchases the
11 tobacco product for his or her personal use.

12 Note: There is another exception to subsection (1) in section 49
13 (non-compliant tobacco products for export).

14 *Fault-based offence*

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

17 Penalty: 2,000 penalty units.

18 Note 1: See section 50 in relation to the physical elements of the offence.

19 Note 2: A defendant bears an evidential burden in relation to the matter in
20 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

21 *Strict liability offence*

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

24 Penalty: 60 penalty units.

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

27 Note 2: A defendant bears an evidential burden in relation to the matter in
28 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Civil penalty provision

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

Civil penalty: 2,000 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 98).

- (6) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

39 Manufacturing non-compliant tobacco products

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

Note: There is an exception to this subsection in section 49 (non-compliant tobacco products for export).

Fault-based offence

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

Penalty: 2,000 penalty units.

Note: See section 50 in relation to the physical elements of the offence.

Strict liability offence

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

Penalty: 60 penalty units.

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

Chapter 3 Offences and civil penalty provisions

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

Division 2 Non-compliant tobacco products

Section 39

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Civil penalty provision

2

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

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Civil penalty: 2,000 penalty units.

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Note: It is not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision, except in limited circumstances (see section 98).

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2 **Part 3—Offences and civil penalty provisions**
3 **relating to constitutional corporations**

4 **Division 1—Non-compliant retail packaging of tobacco**
5 **products**

6 **40 Selling or supplying tobacco products to a constitutional**
7 **corporation in non-compliant retail packaging**

- 8 (1) A person contravenes this subsection if:
9 (a) the person:
10 (i) sells a tobacco product; or
11 (ii) offers a tobacco product for sale; or
12 (iii) otherwise supplies (whether or not for consideration) a
13 tobacco product;
14 to another person; and
15 (b) that other person is a constitutional corporation; and
16 (c) at the time the product is sold, offered for sale, or otherwise
17 supplied, the product has been packaged for retail sale; and
18 (d) the retail packaging does not comply with a tobacco product
19 requirement.

20 Note 1: There is an exception to this subsection in section 49 (non-compliant
21 tobacco products for export).

22 Note 2: See subsection 4(2) for an extended meaning of *offer*.

23 *Fault-based offence*

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

26 Penalty: 2,000 penalty units.

27 Note: See section 50 in relation to the physical elements of the offence.

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

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant retail packaging of tobacco products

Section 41

1 Note: For strict liability in relation to a physical element of an offence, see
2 subsection 6.1(2) of the *Criminal Code*.

3 *Strict liability offence*

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

6 Penalty: 60 penalty units.

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

9 *Civil penalty provision*

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

12 Civil penalty: 2,000 penalty units.

13 Note: It is not necessary to prove a person's state of mind in proceedings for
14 a contravention of a civil penalty provision, except in limited
15 circumstances (see section 98).

16 **41 Purchasing tobacco products from a constitutional corporation in**
17 **non-compliant retail packaging**

18 (1) A person contravenes this subsection if:
19 (a) the person purchases a tobacco product from another person;
20 and
21 (b) the other person is a constitutional corporation; and
22 (c) at the time the product is purchased, the product has been
23 packaged for retail sale; and
24 (d) the retail packaging does not comply with a tobacco product
25 requirement.

26 (2) Subsection (1) does not apply to an individual who purchases the
27 tobacco product for his or her personal use.

28 Note: There is another exception to subsection (1) in section 49
29 (non-compliant tobacco products for export).

1 *Fault-based offence*

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

4 Penalty: 2,000 penalty units.

5 Note 1: See section 50 in relation to the physical elements of the offence.

6 Note 2: A defendant bears an evidential burden in relation to the matter in
7 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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

10 Note: For strict liability in relation to a physical element of an offence, see
11 subsection 6.1(2) of the *Criminal Code*.

12 *Strict liability offence*

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

15 Penalty: 60 penalty units.

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

18 Note 2: A defendant bears an evidential burden in relation to the matter in
19 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

20 *Civil penalty provision*

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

23 Civil penalty: 2,000 penalty units.

24 Note: It is not necessary to prove a person's state of mind in proceedings for
25 a contravention of a civil penalty provision, except in limited
26 circumstances (see section 98).

27 (7) A person who wishes to rely on subsection (2) in proceedings for a
28 civil penalty order bears an evidential burden in relation to the
29 matter in that subsection.

Section 42

1 **42 Packaging tobacco products in non-compliant retail packaging**
2 **under a contract with a constitutional corporation**

- 3 (1) A person contravenes this subsection if:
4 (a) the person packages a tobacco product for retail sale; and
5 (b) the product is packaged under a contract with a constitutional
6 corporation; and
7 (c) the retail packaging does not comply with a tobacco product
8 requirement.

9 Note: There is an exception to this subsection in section 49 (non-compliant
10 tobacco products for export).

11 *Fault-based offence*

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

14 Penalty: 2,000 penalty units.

15 Note: See section 50 in relation to the physical elements of the offence.

- 16 (3) For the purposes of subsection (2), strict liability applies to:
17 (a) the element of the offence that the tobacco product is
18 packaged for retail sale; and
19 (b) paragraph (1)(b).

20 Note: For strict liability in relation to a physical element of an offence, see
21 subsection 6.1(2) of the *Criminal Code*.

22 *Strict liability offence*

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

25 Penalty: 60 penalty units.

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

28 *Civil penalty provision*

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

1 Civil penalty: 2,000 penalty units.

2 Note: It is not necessary to prove a person's state of mind in proceedings for
3 a contravention of a civil penalty provision, except in limited
4 circumstances (see section 98).

5 **43 Manufacturing non-compliant retail packaging of tobacco**
6 **products under a contract with a constitutional**
7 **corporation**

- 8 (1) A person contravenes this subsection if:
- 9 (a) the person (the *manufacturer*) manufactures any of the
10 following retail packaging of tobacco products:
- 11 (i) a container for retail sale;
- 12 (ii) a container for retail sale that contains or will contain
13 smaller containers;
- 14 (iii) a plastic or other wrapper that covers or will cover a
15 container or containers for retail sale;
- 16 (iv) a plastic or other wrapper that covers or will cover a
17 tobacco product that is for retail sale; and
- 18 (b) the retail packaging is manufactured under a contract with a
19 constitutional corporation; and
- 20 (c) a tobacco product is packaged for retail sale in the retail
21 packaging by a person other than the manufacturer; and
- 22 (d) the retail packaging does not comply with a tobacco product
23 requirement.

24 Note: There is an exception to this subsection in section 49 (non-compliant
25 tobacco products for export).

26 *Fault-based offence*

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

29 Penalty: 2,000 penalty units.

30 Note: See section 50 in relation to the physical elements of the offence.

- 31 (3) For the purposes of subsection (2), strict liability applies to:
- 32 (a) the element of the offence that the packaging is retail
33 packaging; and

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant retail packaging of tobacco products

Section 44

1 (b) paragraph (1)(b).

2 Note: For strict liability in relation to a physical element of an offence, see
3 subsection 6.1(2) of the *Criminal Code*.

4 *Strict liability offence*

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

7 Penalty: 60 penalty units.

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

10 *Civil penalty provision*

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

13 Civil penalty: 2,000 penalty units.

14 Note: It is not necessary to prove a person's state of mind in proceedings for
15 a contravention of a civil penalty provision, except in limited
16 circumstances (see section 98).

17 **44 Packaging tobacco products in non-compliant retail packaging**
18 **bearing identifying mark of a constitutional corporation**

19 (1) A person contravenes this subsection if:

20 (a) the person packages a tobacco product for retail sale; and

21 (b) the trade mark, brand, business or company name, or other
22 identifying mark, of a constitutional corporation appears on
23 the retail packaging; and

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

26 Note: There is an exception to this subsection in section 49 (non-compliant
27 tobacco products for export).

28 *Fault-based offence*

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

1 Penalty: 2,000 penalty units.

2 Note: See section 50 in relation to the physical elements of the offence.

- 3 (3) For the purposes of subsection (2), strict liability applies to:
4 (a) the element of the offence that the tobacco product is
5 packaged for retail sale; and
6 (b) paragraph (1)(b).

7 Note: For strict liability in relation to a physical element of an offence, see
8 subsection 6.1(2) of the *Criminal Code*.

9 *Strict liability offence*

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

12 Penalty: 60 penalty units.

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

15 *Civil penalty provision*

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

18 Civil penalty: 2,000 penalty units.

19 Note: It is not necessary to prove a person's state of mind in proceedings for
20 a contravention of a civil penalty provision, except in limited
21 circumstances (see section 98).

22 **45 Manufacturing non-compliant retail packaging of tobacco**
23 **products that bears identifying mark of a constitutional**
24 **corporation**

- 25 (1) A person contravenes this subsection if:
26 (a) the person (the *manufacturer*) manufactures any of the
27 following retail packaging of tobacco products:
28 (i) a container for retail sale;
29 (ii) a container for retail sale that contains or will contain
30 smaller containers;

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant retail packaging of tobacco products

Section 45

- 1 (iii) a plastic or other wrapper that covers or will cover a
2 container or containers for retail sale;
3 (iv) a plastic or other wrapper that covers or will cover a
4 tobacco product that is for retail sale; and
5 (b) the trade mark, brand, business or company name, or other
6 identifying mark, of a constitutional corporation appears on
7 the retail packaging; and
8 (c) a tobacco product is packaged for retail sale in the retail
9 packaging by a person other than the manufacturer; and
10 (d) the retail packaging does not comply with a tobacco product
11 requirement.

12 Note: There is an exception to this subsection in section 49 (non-compliant
13 tobacco products for export).

14 *Fault-based offence*

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

17 Penalty: 2,000 penalty units.

18 Note: See section 50 in relation to the physical elements of the offence.

- 19 (3) For the purposes of subsection (2), strict liability applies to:
20 (a) the element of the offence that the packaging is retail
21 packaging; and
22 (b) paragraph (1)(b).

23 Note: For strict liability in relation to a physical element of an offence, see
24 subsection 6.1(2) of the *Criminal Code*.

25 *Strict liability offence*

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

28 Penalty: 60 penalty units.

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

1 *Civil penalty provision*

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

4 Civil penalty: 2,000 penalty units.

5 Note: It is not necessary to prove a person's state of mind in proceedings for
6 a contravention of a civil penalty provision, except in limited
7 circumstances (see section 98).

8 **46 Certain supplies, by or to a constitutional corporation, of tobacco**
9 **products that have not been packaged for retail sale**

- 10 (1) A person contravenes this subsection if:
11 (a) the person:
12 (i) sells a tobacco product; or
13 (ii) otherwise supplies (whether or not for consideration) a
14 tobacco product;
15 to another person (the *purchaser*); and
16 (b) either the person or the purchaser is a constitutional
17 corporation; and
18 (c) the product is not packaged for retail sale; and
19 (d) at the time of the supply, the person does not have a contract
20 with the purchaser that prohibits the purchaser from
21 supplying the product in Australia in retail packaging that
22 does not comply with the tobacco product requirements.
- 23 (2) To avoid doubt, the contract may allow the purchaser to supply the
24 tobacco product without having packaged the product for retail
25 sale.

26 *Fault-based offence*

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

29 Penalty: 2,000 penalty units.

30 Note: See section 50 in relation to the physical elements of the offence.

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant retail packaging of tobacco products

Section 46

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

3 Note: For strict liability in relation to a physical element of an offence, see
4 subsection 6.1(2) of the *Criminal Code*.

5 *Strict liability offence*

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

8 Penalty: 60 penalty units.

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

11 *Civil penalty provision*

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

14 Civil penalty: 2,000 penalty units.

15 Note: It is not necessary to prove a person's state of mind in proceedings for
16 a contravention of a civil penalty provision, except in limited
17 circumstances (see section 98).
18

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2 **Division 2—Non-compliant tobacco products**

3 **47 Selling or supplying non-compliant tobacco products to a**
4 **constitutional corporation**

- 5 (1) A person contravenes this subsection if:
6 (a) the person:
7 (i) sells a tobacco product; or
8 (ii) offers a tobacco product for sale; or
9 (iii) otherwise supplies (whether or not for consideration) a
10 tobacco product;
11 to another person; and
12 (b) the other person is a constitutional corporation; and
13 (c) the product does not comply with a tobacco product
14 requirement.

15 Note 1: There is an exception to this subsection in section 49 (non-compliant
16 tobacco products for export).

17 Note 2: See subsection 4(2) for an extended meaning of *offer*.

18 *Fault-based offence*

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

21 Penalty: 2,000 penalty units.

22 Note: See section 50 in relation to the physical elements of the offence.

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

25 Note: For strict liability in relation to a physical element of an offence, see
26 subsection 6.1(2) of the *Criminal Code*.

27 *Strict liability offence*

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

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 2 Non-compliant tobacco products

Section 48

1 Penalty: 60 penalty units.

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

4 *Civil penalty provision*

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

7 Civil penalty: 2,000 penalty units.

8 Note: It is not necessary to prove a person’s state of mind in proceedings for
9 a contravention of a civil penalty provision, except in limited
10 circumstances (see section 98).

11 **48 Purchasing non-compliant tobacco products from a**
12 **constitutional corporation**

13 (1) A person contravenes this subsection if:
14 (a) the person purchases a tobacco product from another person;
15 and
16 (b) the other person is a constitutional corporation; and
17 (c) the product does not comply with a tobacco product
18 requirement.

19 (2) Subsection (1) does not apply to an individual who purchases the
20 tobacco product for his or her personal use.

21 Note: There is another exception to subsection (1) in section 49
22 (non-compliant tobacco products for export).

23 *Fault-based offence*

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

26 Penalty: 2,000 penalty units.

27 Note 1: See section 50 in relation to the physical elements of the offence.

28 Note 2: A defendant bears an evidential burden in relation to the matter in
29 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

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

1 Note: For strict liability in relation to a physical element of an offence, see
2 subsection 6.1(2) of the *Criminal Code*.

3 *Strict liability offence*

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

6 Penalty: 60 penalty units.

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

9 Note 2: A defendant bears an evidential burden in relation to the matter in
10 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

11 *Civil penalty provision*

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

14 Civil penalty: 2,000 penalty units.

15 Note: It is not necessary to prove a person's state of mind in proceedings for
16 a contravention of a civil penalty provision, except in limited
17 circumstances (see section 98).

18 (7) A person who wishes to rely on subsection (2) in proceedings for a
19 civil penalty order bears an evidential burden in relation to the
20 matter in that subsection.
21

Section 49

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2 **Part 4—Export exception and physical elements of**
3 **offences**

4

5 **49 Export exception for non-compliant tobacco products**

6 (1) Subsection (1) of any of sections 31 to 48 (other than section 36 or
7 46) does not apply if:

8 (a) a person (the *relevant person*):

9 (i) engages in the conduct to which that subsection applies
10 in relation to a tobacco product; or

11 (ii) manufactures retail packaging, and a tobacco product is
12 packaged for retail sale in the retail packaging by
13 another person; and

14 (b) a contract or arrangement has been entered into, or an
15 understanding has been arrived at, for the tobacco product to
16 be exported (whether or not the relevant person is a party to
17 that contract, arrangement or understanding); and

18 (c) the relevant person engages in that conduct, or manufactures
19 that retail packaging, in the course of, or for the purposes of,
20 the tobacco product being exported; and

21 (d) if the relevant person supplies or purchases the tobacco
22 product, or offers to supply the tobacco product:

23 (i) the supply is not a retail sale; or

24 (ii) the relevant person does not purchase the product in the
25 course of a retail sale; or

26 (iii) the relevant person does not offer the product for retail
27 sale;

28 (as the case requires).

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

31 (2) A person who wishes to rely on subsection (1) in proceedings for a
32 civil penalty order bears an evidential burden in relation to the
33 matters in that subsection.

1 **50 Physical elements of offences**

2 For the purposes of applying Chapter 2 of the *Criminal Code* to an
3 offence in a section in this Chapter, the physical elements of the
4 offence are set out in subsection (1) of the section.

5 Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal
6 responsibility.
7

Section 51

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**Chapter 4—Powers to investigate
contraventions of this Act**

Part 1—Simplified outline

51 Simplified outline

The following is a simplified outline of this Chapter:

- An authorised officer may enter premises under Part 2 of this Chapter if there are reasonable grounds for suspecting that there may be material on the premises related to the commission of an offence or the contravention of a civil penalty provision in this Act.
- Entry must be with the consent of the occupier of the premises or under a warrant.
- An authorised officer who enters premises may exercise search powers. The authorised officer may be assisted by other persons if that assistance is necessary and reasonable.
- The occupier of the premises has certain rights and responsibilities.
- An authorised officer can require information or documents to be produced under Part 3 of this Chapter.
- Authorised officers are appointed by the Secretary under Part 4 of this Chapter.

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2 **Part 2—Search warrants**

3 **Division 1—Search powers**

4 **52 Authorised officer may enter premises by consent or under a**
5 **warrant**

- 6 (1) If an authorised officer has reasonable grounds for suspecting that
7 there may be evidential material on any premises, the authorised
8 officer may:
- 9 (a) enter the premises; and
 - 10 (b) exercise the search powers (set out in sections 53, 54 and 55).
- 11 (2) However, an authorised officer is not authorised to enter the
12 premises unless:
- 13 (a) the occupier of the premises has consented to the entry and
14 the authorised officer has shown his or her identity card if
15 required by the occupier; or
 - 16 (b) the entry is made under a warrant.

17 Note: If entry to the premises is with the occupier's consent, the authorised
18 officer must leave the premises if the consent ceases to have effect
19 (see section 59).

20 **53 Search powers of authorised officers**

21 The following are the *search powers* that an authorised officer may
22 exercise in relation to premises under section 52:

- 23 (a) if entry to the premises is with the occupier's consent—the
24 power to search the premises and any thing on the premises
25 for the evidential material the authorised officer has
26 reasonable grounds for suspecting may be on the premises;
- 27 (b) if entry to the premises is under a warrant:
 - 28 (i) the power to search the premises and any thing on the
29 premises for the kind of evidential material specified in
30 the warrant; and

Section 54

- 1 (ii) the power to seize evidential material of that kind if the
2 authorised officer finds it on the premises;
- 3 (c) the power to inspect, examine, take measurements of,
4 conduct tests on or take samples of evidential material
5 referred to in paragraph (a) or (b);
- 6 (d) the power to make any still or moving image or any
7 recording of the premises or evidential material referred to in
8 paragraph (a) or (b);
- 9 (e) the power to take onto the premises such equipment and
10 materials as the authorised officer requires for the purpose of
11 exercising powers in relation to the premises;
- 12 (f) the powers set out in subsections 54(1) and (2) and
13 section 55.

14 **54 Powers relating to electronic equipment**

- 15 (1) The *search powers* include the power to operate electronic
16 equipment on the premises if the authorised officer has reasonable
17 grounds for suspecting that:
- 18 (a) the equipment; or
19 (b) a disk, tape or other storage device that:
20 (i) is on the premises; and
21 (ii) can be used with the equipment or is associated with it;
22 contains evidential material referred to in paragraph 53(a) or (b).
- 23 (2) The *search powers* include the following powers in relation to
24 evidential material described in subsection (1) found in the
25 exercise of the power under that subsection:
- 26 (a) if entry to the premises is under a warrant—the power to
27 seize the equipment and the disk, tape or other storage device
28 referred to in that subsection;
- 29 (b) the power to operate electronic equipment on the premises to
30 put the evidential material in documentary form and remove
31 the documents so produced from the premises;
- 32 (c) the power to operate electronic equipment on the premises to
33 transfer the evidential material to a disk, tape or other storage
34 device that:

- 1 (i) is brought to the premises for the exercise of the power;
2 or
3 (ii) is on the premises and the use of which for that purpose
4 has been agreed in writing by the occupier of the
5 premises;
6 and remove the disk, tape or other storage device from the
7 premises.

- 8 (3) An authorised officer may operate electronic equipment as
9 mentioned in subsection (1) or (2) only if he or she believes on
10 reasonable grounds that the operation of the equipment can be
11 carried out without damage to the equipment.

12 Note: For compensation for damage to electronic equipment, see section 66.

- 13 (4) An authorised officer may seize equipment or a disk, tape or other
14 storage device as mentioned in paragraph (2)(a) only if:
15 (a) it is not practicable to put the evidential material in
16 documentary form as mentioned in paragraph (2)(b) or to
17 transfer the evidential material as mentioned in
18 paragraph (2)(c); or
19 (b) possession of the equipment or the disk, tape or other storage
20 device by the occupier could constitute an offence against a
21 law of the Commonwealth.

22 **55 Seizing other evidential material**

23 The *search powers* include seizing a thing from premises if:

- 24 (a) entry to the premises is under a warrant; and
25 (b) the authorised officer finds the thing in the course of
26 searching for the kind of evidential material specified in the
27 warrant; and
28 (c) the authorised officer believes on reasonable grounds that the
29 thing is other evidential material; and
30 (d) the authorised officer believes on reasonable grounds that it
31 is necessary to seize the thing in order to prevent its
32 concealment, loss or destruction.

Section 56

1 **56 Persons assisting authorised officers**

2 *Authorised officers may be assisted by other persons*

3 (1) An authorised officer may be assisted by other persons in
4 exercising powers or performing functions or duties under this
5 Part, if that assistance is necessary and reasonable. A person giving
6 such assistance is a *person assisting* the authorised officer.

7 *Powers of a person assisting the authorised officer*

8 (2) A person assisting the authorised officer:
9 (a) may enter the premises; and
10 (b) may exercise powers and perform functions and duties under
11 this Part in relation to evidential material; and
12 (c) must do so in accordance with a direction given to the person
13 assisting by the authorised officer.

14 (3) A power exercised by a person assisting the authorised officer as
15 mentioned in subsection (2) is taken for all purposes to have been
16 exercised by the authorised officer.

17 (4) A function or duty performed by a person assisting the authorised
18 officer as mentioned in subsection (2) is taken for all purposes to
19 have been performed by the authorised officer.

20 (5) If a direction is given under paragraph (2)(c) in writing, the
21 direction is not a legislative instrument.

22 **57 Use of force in executing a warrant**

23 In executing a warrant, an authorised officer, or a person assisting
24 an authorised officer, may use such force against things as is
25 necessary and reasonable in the circumstances.
26

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2 **Division 2—Powers of authorised officers to ask questions**
3 **and seek production of documents**

4 **58 Authorised officer may ask questions and seek production of**
5 **documents**

6 *Entry with consent—officer may ask questions etc.*

- 7 (1) If an authorised officer is authorised to enter premises because the
8 occupier of the premises consented to the entry, the authorised
9 officer may ask the occupier to:
- 10 (a) answer any questions relating to the reasons for the
11 authorised officer entering the premises that are put by the
12 authorised officer; and
 - 13 (b) produce any document relating to the reasons for the
14 authorised officer entering the premises that is requested by
15 the authorised officer.

16 *Entry under a warrant—officer may require answers etc.*

- 17 (2) If an authorised officer is authorised to enter premises by a
18 warrant, the authorised officer may require any person on the
19 premises to:
- 20 (a) answer any questions relating to the reasons for the
21 authorised officer entering the premises that are put by the
22 authorised officer; and
 - 23 (b) produce any document relating to the reasons for the
24 authorised officer entering the premises that is requested by
25 the authorised officer.

26 Note: For self-incrimination, see section 83.

27 *Offence for failure to comply when entry under warrant*

- 28 (3) A person commits an offence if:
29 (a) the person is subject to a requirement under subsection (2);
30 and
-

Chapter 4 Powers to investigate contraventions of this Act

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

Section 58

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

2 Penalty for contravention of this subsection: 30 penalty units.

3

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2 **Division 3—Obligations and incidental powers of**
3 **authorised officers**

4 **59 Consent**

- 5 (1) Before obtaining the consent of an occupier of premises for the
6 purposes of paragraph 52(2)(a), an authorised officer must inform
7 the occupier that the occupier may refuse consent.
- 8 (2) A consent has no effect unless the consent is voluntary.
- 9 (3) A consent may be expressed to be limited to entry during a
10 particular period. If so, the consent has effect for that period unless
11 the consent is withdrawn before the end of that period.
- 12 (4) A consent that is not limited as mentioned in subsection (3) has
13 effect until the consent is withdrawn.
- 14 (5) If an authorised officer has entered premises because of the consent
15 of the occupier of the premises, the authorised officer, and any
16 person assisting the authorised officer, must leave the premises if
17 the consent ceases to have effect.

18 **60 Announcement before entry under warrant**

- 19 (1) Before entering premises under a warrant, an authorised officer
20 must:
21 (a) announce that he or she is authorised to enter the premises;
22 and
23 (b) show his or her identity card to the occupier of the premises,
24 or to another person who apparently represents the occupier,
25 if the occupier or other person is present at the premises; and
26 (c) give any person at the premises an opportunity to allow entry
27 to the premises.
- 28 (2) However, an authorised officer is not required to comply with
29 subsection (1) if he or she believes on reasonable grounds that
30 immediate entry to the premises is required:

Section 61

- 1 (a) to ensure the safety of a person; or
2 (b) to ensure that the effective execution of the warrant is not
3 frustrated.
- 4 (3) If:
5 (a) an authorised officer does not comply with subsection (1)
6 because of subsection (2); and
7 (b) the occupier of the premises, or another person who
8 apparently represents the occupier, is present at the premises;
9 the authorised officer must show his or her identity card to the
10 occupier or other person, as soon as practicable after entering the
11 premises.

12 **61 Authorised officer to be in possession of warrant**

- 13 An authorised officer who is executing a warrant must be in
14 possession of:
15 (a) the warrant issued by the issuing officer under section 75
16 (ordinary warrants), or a copy of the warrant as so issued; or
17 (b) the form of warrant completed under subsection 76(6)
18 (telephone warrants), or a copy of the form as so completed.

19 **62 Details of warrant etc. to be given to occupier**

- 20 (1) An authorised officer must comply with subsection (2) if:
21 (a) a warrant is being executed in relation to premises; and
22 (b) the occupier of the premises, or another person who
23 apparently represents the occupier, is present at the premises.
- 24 (2) The authorised officer must, as soon as practicable:
25 (a) do one of the following:
26 (i) if the warrant was issued under section 75 (ordinary
27 warrants)—make a copy of the warrant available to the
28 occupier or other person (which need not include the
29 signature of the issuing officer who issued it);
30 (ii) if the warrant was signed under section 76 (telephone
31 warrants)—make a copy of the form of warrant
32 completed under subsection 76(6) available to the
33 occupier or other person; and
-

- 1 (b) inform the occupier or other person of the rights and
2 responsibilities of the occupier or other person under
3 Division 4.

4 **63 Completing execution of warrant after temporary cessation**

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

19 *Application for extension in emergency situation*

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

Section 64

1 *Extension in emergency situation*

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

11 **64 Completing execution of warrant stopped by court order**

- 12 An authorised officer, and any persons assisting, may complete the
13 execution of a warrant that has been stopped by an order of a court
14 if:
- 15 (a) the order is later revoked or reversed on appeal; and
 - 16 (b) the warrant is still in force when the order is revoked or
17 reversed.

18 **65 Expert assistance to operate electronic equipment**

- 19 (1) This section applies to premises to which a warrant relates.

20 *Securing equipment*

- 21 (2) An authorised officer may do whatever is necessary to secure any
22 electronic equipment that is on premises if he or she believes on
23 reasonable grounds that:
- 24 (a) there is on the premises evidential material of the kind
25 specified in the warrant; and
 - 26 (b) that evidential material may be accessible by operating the
27 equipment; and
 - 28 (c) expert assistance is required to operate the equipment; and
 - 29 (d) the evidential material may be destroyed, altered or otherwise
30 interfered with, if the authorised officer does not take action
31 under this subsection.

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

3 (3) The authorised officer must give notice to the occupier of the
4 premises, or another person who apparently represents the
5 occupier, of:

- 6 (a) his or her intention to secure the equipment; and
7 (b) the fact that the equipment may be secured for up to 24
8 hours.

9 *Period equipment may be secured*

10 (4) The equipment may be secured until the earlier of the following
11 happens:

- 12 (a) the 24-hour period ends;
13 (b) the equipment has been operated by the expert.

14 Note: For compensation for damage to electronic equipment, see section 66.

15 *Extensions*

16 (5) The authorised officer may apply to an issuing officer for an
17 extension of the 24-hour period if he or she believes on reasonable
18 grounds that the equipment needs to be secured for more than that
19 period.

20 (6) Before making the application, the authorised officer must give
21 notice to the occupier of the premises, or another person who
22 apparently represents the occupier, of his or her intention to apply
23 for an extension. The occupier or other person is entitled to be
24 heard in relation to that application.

25 (7) The provisions of this Part relating to the issue of warrants apply,
26 with such modifications as are necessary, to the issue of an
27 extension.

28 (8) The 24-hour period may be extended more than once.

29 **66 Compensation for damage to electronic equipment**

30 (1) This section applies if:

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Section 66

- 1 (a) as a result of electronic equipment being operated as
2 mentioned in this Part:
- 3 (i) damage is caused to the equipment; or
4 (ii) the data recorded on the equipment is damaged; or
5 (iii) programs associated with the use of the equipment, or
6 with the use of the data, are damaged or corrupted; and
7 (b) the damage or corruption occurs because:
- 8 (i) insufficient care was exercised in selecting the person
9 who was to operate the equipment; or
10 (ii) insufficient care was exercised by the person operating
11 the equipment.
- 12 (2) The Commonwealth must pay the owner of the equipment, or the
13 user of the data or programs, such reasonable compensation for the
14 damage or corruption as the Commonwealth and the owner or user
15 agree on.
- 16 (3) However, if the owner or user and the Commonwealth fail to
17 agree, the owner or user may institute proceedings in a court of
18 competent jurisdiction for such reasonable amount of
19 compensation as the court determines.
- 20 (4) In determining the amount of compensation payable, regard is to
21 be had to whether the occupier of the premises, or the occupier's
22 employees or agents, if they were available at the time, provided
23 any appropriate warning or guidance on the operation of the
24 equipment.
25

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2 **Division 4—Occupier's rights and responsibilities**

3 **67 Occupier entitled to observe execution of warrant**

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

12 **68 Occupier to provide authorised officer with facilities and**
13 **assistance**

- 14 (1) The occupier of premises to which a warrant relates, or another
15 person who apparently represents the occupier, must provide:
16 (a) an authorised officer executing the warrant; and
17 (b) any person assisting the authorised officer;
18 with all reasonable facilities and assistance for the effective
19 exercise of their powers, and the effective performance of their
20 functions and duties.

21 *Offence*

- 22 (2) A person commits an offence if:
23 (a) the person is subject to subsection (1); and
24 (b) the person fails to comply with that subsection.

25 Penalty for contravention of this subsection: 30 penalty units.
26

Section 69

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

3 **69 Copies of seized things to be provided**

4

(1) This section applies if:

5

(a) a warrant is being executed in relation to premises; and

6

(b) an authorised officer seizes one or more of the following
from the premises under this Part:

7

8

(i) a document, film, computer file or other thing that can
be readily copied;

9

10

(ii) a storage device, the information in which can be
readily copied.

11

12

(2) The occupier of the premises, or another person who apparently
represents the occupier and who is present when the warrant is
executed, may request the authorised officer to give a copy of the
thing or the information to the occupier or other person.

13

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15

16

(3) The authorised officer must comply with such a request as soon as
practicable after the seizure.

17

18

(4) However, the authorised officer is not required to comply with
such a request if possession of the document, film, computer file,
thing or information by the occupier or other person could
constitute an offence against a law of the Commonwealth.

19

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21

22 **70 Receipts for seized things**

23

(1) An authorised officer must provide a receipt for a thing that is
seized under this Part.

24

25

(2) One receipt may cover 2 or more things that are seized.

26 **71 Return of seized things**

27

(1) The Secretary must take reasonable steps to return a thing seized
under this Part when the earliest of the following happens:

28

29

(a) the reason for the thing's seizure no longer exists;

- 1 (b) it is decided that the thing is not to be used in evidence;
2 (c) the period of 60 days after the thing's seizure ends.

3 Note: See subsections (2) and (3) for exceptions to this rule.

4 *Exceptions*

- 5 (2) Subsection (1):
6 (a) is subject to any contrary order of a court; and
7 (b) does not apply if the thing:
8 (i) is forfeited or forfeitable to the Commonwealth; or
9 (ii) is the subject of a dispute as to ownership.
- 10 (3) The Secretary is not required to take reasonable steps to return a
11 thing because of paragraph (1)(c) if:
12 (a) proceedings in respect of which the thing may afford
13 evidence were instituted before the end of the 60 days and
14 have not been completed (including an appeal to a court in
15 relation to those proceedings); or
16 (b) the thing may continue to be retained because of an order
17 under section 72; or
18 (c) the Commonwealth, the Secretary or an authorised officer is
19 otherwise authorised (by a law, or an order of a court, of the
20 Commonwealth or of a State or Territory) to retain, destroy,
21 dispose of or otherwise deal with the thing.

22 *Return of thing*

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

26 **72 Issuing officer may permit a seized thing to be retained**

27 *Application to retain seized thing*

- 28 (1) The Secretary may apply to an issuing officer for an order
29 permitting the retention of a thing seized under this Part for a
30 further period if proceedings in respect of which the thing may
31 afford evidence have not commenced before the end of:

Section 73

- 1 (a) 60 days after the seizure; or
2 (b) a period previously specified in an order of an issuing officer
3 under this section.

- 4 (2) Before making the application, the Secretary must:
5 (a) take reasonable steps to discover who has an interest in the
6 retention of the thing; and
7 (b) if it is practicable to do so, notify each person whom the
8 Secretary believes to have such an interest of the proposed
9 application.

10 *Order to retain seized thing*

- 11 (3) The issuing officer may order that the thing may continue to be
12 retained for a period specified in the order if the issuing officer is
13 satisfied that it is necessary for the thing to continue to be retained:
14 (a) for the purposes of investigating whether:
15 (i) an offence has been committed against this Act, or the
16 *Crimes Act 1914* or the *Criminal Code* to the extent that
17 it relates to this Act; or
18 (ii) a civil penalty provision in this Act has been
19 contravened; or
20 (b) to enable evidence of such an offence or contravention to be
21 secured for the purposes of a prosecution or action.
22 (4) The period specified must not exceed 3 years.

23 **73 Disposal of seized things**

- 24 (1) The Secretary may dispose of a thing seized under this Part if:
25 (a) the Secretary has taken reasonable steps to return the thing to
26 a person; and
27 (b) either:
28 (i) the Secretary has been unable to locate the person; or
29 (ii) the person has refused to take possession of the thing.
30 (2) The Secretary may dispose of the thing in any manner that he or
31 she thinks appropriate.

1 **74 Compensation for acquisition of property**

- 2 (1) If the operation of section 73 would result in an acquisition of
3 property from a person otherwise than on just terms, the
4 Commonwealth is liable to pay a reasonable amount of
5 compensation to the person.
- 6 (2) If the Commonwealth and the person do not agree on the amount
7 of the compensation, the person may institute proceedings in a
8 court of competent jurisdiction for the recovery from the
9 Commonwealth of such reasonable amount of compensation as the
10 court determines.
11

Section 75

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2 **Division 6—Issue of warrants**

3 **75 Issue of warrants**

4 *Application for warrant*

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

7 *Issue of warrant*

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

17 *Content of warrant*

- 18 (4) The warrant must:
- 19 (a) state the offence or offences, or civil penalty provision or
20 civil penalty provisions, to which the warrant relates; and
- 21 (b) describe the premises to which the warrant relates; and
- 22 (c) state that the warrant is issued under this Division; and
- 23 (d) specify the kind of evidential material that is to be searched
24 for under the warrant; and
- 25 (e) state that the evidential material specified, and any other
26 evidential material found in the course of executing the
27 warrant, may be seized under the warrant; and
- 28 (f) name one or more authorised officers; and
- 29 (g) authorise the authorised officers named in the warrant:
- 30 (i) to enter the premises; and

- 1 (ii) to exercise the powers set out in this Part in relation to
2 the premises; and
3 (h) state whether entry is authorised to be made at any time of
4 the day or during specified hours of the day; and
5 (i) specify the day (not more than 1 week after the issue of the
6 warrant) on which the warrant ceases to be in force.

7 **76 Warrants by telephone, fax etc.**

8 *Application for warrant*

- 9 (1) An authorised officer may apply to an issuing officer by telephone,
10 fax or other electronic means for a warrant under section 75 in
11 relation to premises:
12 (a) in an urgent case; or
13 (b) if the delay that would occur if an application were made in
14 person would frustrate the effective execution of the warrant.
- 15 (2) The issuing officer may require communication by voice to the
16 extent that it is practicable in the circumstances.
- 17 (3) Before applying for the warrant, the authorised officer must
18 prepare an information of the kind mentioned in subsection 75(2)
19 in relation to the premises that sets out the grounds on which the
20 warrant is sought. If it is necessary to do so, the authorised officer
21 may apply for the warrant before the information is sworn or
22 affirmed.

23 *Issuing officer may complete and sign warrant*

- 24 (4) The issuing officer may complete and sign the same warrant that
25 would have been issued under section 75 if the issuing officer is
26 satisfied that there are reasonable grounds for doing so:
27 (a) after considering the terms of the information; and
28 (b) after receiving such further information (if any) as the issuing
29 officer requires concerning the grounds on which the issue of
30 the warrant is being sought.

Section 77

- 1 (5) After completing and signing the warrant, the issuing officer must
2 inform the authorised officer, by telephone, fax or other electronic
3 means, of:
4 (a) the terms of the warrant; and
5 (b) the day on which, and the time at which, the warrant was
6 signed.

7 *Obligations on authorised officer*

- 8 (6) The authorised officer must then do the following:
9 (a) complete a form of warrant in the same terms as the warrant
10 completed and signed by the issuing officer;
11 (b) state on the form the following:
12 (i) the name of the issuing officer;
13 (ii) the day on which, and the time at which, the warrant
14 was signed;
15 (c) send the following to the issuing officer:
16 (i) the form of warrant completed by the authorised officer;
17 (ii) the information referred to in subsection (3), which
18 must have been duly sworn or affirmed.
- 19 (7) The authorised officer must comply with paragraph (6)(c) by the
20 end of the day after the earlier of the following:
21 (a) the day on which the warrant ceases to be in force;
22 (b) the day on which the warrant is executed.

23 *Issuing officer to attach documents together*

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

26 **77 Authority of warrant**

- 27 (1) A form of warrant duly completed under subsection 76(6) is
28 authority for the same powers as are authorised by the warrant
29 signed by the issuing officer under subsection 76(4).

- 1 (2) In any proceedings, a court is to assume (unless the contrary is
2 proved) that an exercise of power was not authorised by a warrant
3 under section 76 if:
4 (a) it is material, in those proceedings, for the court to be
5 satisfied that the exercise of power was authorised by that
6 section; and
7 (b) the warrant signed by the issuing officer authorising the
8 exercise of the power is not produced in evidence.

9 **78 Offence relating to warrants by telephone, fax etc.**

10 An authorised officer must not:

- 11 (a) state in a document that purports to be a form of warrant
12 under section 76 the name of an issuing officer unless that
13 issuing officer signed the warrant; or
14 (b) state on a form of warrant under that section a matter that, to
15 the authorised officer's knowledge, departs in a material
16 particular from the terms of the warrant signed by the issuing
17 officer under that section; or
18 (c) purport to execute, or present to another person, a document
19 that purports to be a form of warrant under that section that
20 the authorised officer knows departs in a material particular
21 from the terms of a warrant signed by an issuing officer
22 under that section; or
23 (d) give to an issuing officer a form of warrant under that section
24 that is not the form of warrant that the authorised officer
25 purported to execute.

26 Penalty: Imprisonment for 2 years.
27

Section 79

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2 **Division 7—Powers of issuing officers**

3 **79 Powers of issuing officers**

4 *Consent to conferral of powers*

- 5 (1) An issuing officer may, by writing, consent to have powers
6 conferred by this Part.

7 *Nomination by Attorney-General*

- 8 (2) The Attorney-General may, by writing, nominate an issuing officer
9 in relation to whom a consent is in force under subsection (1) to
10 exercise powers conferred by this Part.

11 *Powers conferred personally*

- 12 (3) A power conferred on an issuing officer by this Part is conferred on
13 the issuing officer:
14 (a) in a personal capacity; and
15 (b) in relation to a Judge of a court created by the Parliament or a
16 Federal Magistrate—not as a court or a member of a court.

17 *Protection and immunity—Judges and Federal Magistrates*

- 18 (4) An issuing officer who is a Judge of a court created by the
19 Parliament, or a Federal Magistrate, exercising a power conferred
20 by this Part has the same protection and immunity as if he or she
21 were exercising the power:
22 (a) as the court of which the issuing officer is a member; or
23 (b) as a member of the court of which the issuing officer is a
24 member.

25 *Protection and immunity—Deputy Presidents and non-presidential
26 members*

- 27 (5) An issuing officer who is a Deputy President or non-presidential
28 member of the Administrative Appeals Tribunal exercising a

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power conferred by this Part has the same protection and immunity
as a Justice of the High Court.

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Section 80

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Part 3—Power to require persons to give information, produce documents or answer questions

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80 Power to require persons to give information, produce documents or answer questions

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(1) An authorised officer may give a notice to a person under subsection (2) if the authorised officer has reason to believe that the person has information or a document that is relevant to the administration or enforcement of this Act.

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(2) The authorised officer may, by written notice given to the person, require the person:

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(a) to give any such information to a specified authorised officer; or

15

16

(b) to produce any such document to a specified authorised officer; or

17

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(c) to appear before a specified authorised officer to answer questions.

19

20

Note: For self-incrimination, see section 83.

21

(3) The notice must:

22

(a) if paragraph (2)(a) or (b) applies:

23

(i) specify the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and

24

25

(ii) specify the manner in which the person is required to comply with the notice; and

26

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28

(b) if paragraph (2)(c) applies—specify a time and place at which the person is to appear; and

29

30

(c) in any case—state the effect of subsection (6) (offence for failure to comply).

31

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Oath or affirmation

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(4) An authorised officer may require answers provided under paragraph (2)(c) to be verified by, or given on, oath or affirmation and either orally or in writing.

3

4

5

(5) An authorised officer to whom information or answers are verified or given may administer the oath or affirmation.

6

7

Offence

8

(6) A person commits an offence if:

9

(a) the person is given a notice under subsection (2); and

10

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

11

Penalty for contravention of this subsection: 30 penalty units.

12

Section 81

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2 **Part 4—Miscellaneous**
3

4 **81 Appointment of authorised officers**

5 (1) The Secretary may, in writing, appoint the following persons as
6 authorised officers:

7 (a) a person who is appointed or engaged under the *Public*
8 *Service Act 1999*;

9 (b) a member or special member of the Australian Federal
10 Police.

11 (2) The Secretary may appoint a person as an authorised officer only if
12 the Secretary is satisfied that the person has suitable qualifications,
13 training or experience.

14 (3) An authorised officer is appointed for the period specified in the
15 instrument of appointment.

16 Note: An authorised officer is eligible for reappointment (see section 33AA
17 of the *Acts Interpretation Act 1901*).

18 **82 Identity cards**

19 (1) The Secretary must issue an identity card to an authorised officer.

20 *Form of identity card*

21 (2) The identity card must:

22 (a) be in the form approved by the Secretary; and

23 (b) contain a recent photograph of the authorised officer.

24 *Authorised officer must carry card*

25 (3) An authorised officer must carry the identity card at all times when
26 exercising powers and performing functions and duties as an
27 authorised officer.

1 *Offence*

- 2 (4) A person commits an offence if:
3 (a) the person ceases to be an authorised officer; and
4 (b) within 14 days of so ceasing, the person does not return the
5 person's identity card to the Secretary.

6 Penalty: 1 penalty unit.

- 7 (5) Subsection (4) is an offence of strict liability.

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

10 *Exception—card lost or destroyed*

- 11 (6) Subsection (4) does not apply if the identity card was lost or
12 destroyed.

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

15 **83 Self-incrimination**

- 16 (1) A person is not excused from giving information, producing a
17 document or answering a question under subsection 58(2) or 80(2)
18 on the ground that the information, the production of the document,
19 or answer to the question, might tend to incriminate the person or
20 expose the person to a penalty.

- 21 (2) However, in the case of an individual none of the following is
22 admissible in evidence against the individual in criminal
23 proceedings:

- 24 (a) the information given, the document produced or the answer
25 given;
26 (b) giving the information, producing the document or answering
27 the question;
28 (c) any information, document or thing obtained as a direct or
29 indirect consequence of giving the information, producing
30 the document or answering the question.
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Section 84

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Chapter 5—Enforcing compliance with this Act

Part 1—Simplified outline

84 Simplified outline

The following is a simplified outline of this Chapter:

- Civil penalty orders may be sought under Part 2 of this Chapter from the Federal Court in relation to contraventions of civil penalty provisions.
- Part 2 also contains some rules of general application in relation to civil penalty provisions.
- Alternatively, a person can be given an infringement notice under Part 3 of this Chapter in relation to a contravention of an offence of strict liability.
- A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of an offence or civil penalty provision. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

1

2 **Part 2—Civil penalty provisions**

3 **Division 1—Obtaining a civil penalty order**

4 **85 Civil penalty orders**

5 *Application for order*

6 (1) The Secretary may apply to the Federal Court for an order that a
7 person, who is alleged to have contravened a civil penalty
8 provision, pay the Commonwealth a pecuniary penalty.

9 (2) The Secretary must make the application within 6 years of the
10 alleged contravention.

11 *Court may order person to pay pecuniary penalty*

12 (3) If the Federal Court is satisfied that the person has contravened the
13 civil penalty provision, the court may order the person to pay to the
14 Commonwealth such pecuniary penalty for the contravention as the
15 court determines to be appropriate.

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

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

19 *Determining pecuniary penalty*

20 (5) The pecuniary penalty must not be more than:

21 (a) if the person is a body corporate—5 times the amount of the
22 pecuniary penalty specified for the civil penalty provision;
23 and

24 (b) otherwise—the amount of the pecuniary penalty specified for
25 the civil penalty provision.

26 (6) In determining the pecuniary penalty, the court may take into
27 account all relevant matters, including:

28 (a) the nature and extent of the contravention; and

Section 86

- 1 (b) the nature and extent of any loss or damage suffered because
2 of the contravention; and
3 (c) the circumstances in which the contravention took place; and
4 (d) whether the person has previously been found by a court in
5 proceedings under one or more of the following to have
6 engaged in any similar conduct:
7 (i) this Act;
8 (ii) the *Crimes Act 1914* or the *Criminal Code* in relation to
9 this Act.

10 **86 Civil enforcement of penalty**

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

16 **87 Conduct contravening more than one civil penalty provision**

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

23 **88 Multiple contraventions**

- 24 (1) The Federal Court may make a single civil penalty order against a
25 person for multiple contraventions of a civil penalty provision if
26 proceedings for the contraventions are founded on the same facts,
27 or if the contraventions form, or are part of, a series of
28 contraventions of the same or a similar character.
29 (2) However, the penalty must not exceed the sum of the maximum
30 penalties that could be ordered if a separate penalty were ordered
31 for each of the contraventions.

1 **89 Proceedings may be heard together**

2 The Federal Court may direct that 2 or more proceedings for civil
3 penalty orders are to be heard together.

4 **90 Civil evidence and procedure rules for civil penalty orders**

5 The Federal Court must apply the rules of evidence and procedure
6 for civil matters when hearing proceedings for a civil penalty
7 order.

8 **91 Contravening a civil penalty provision is not an offence**

9 A contravention of a civil penalty provision is not an offence.
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Section 92

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2 **Division 2—Civil proceedings and criminal proceedings**

3 **92 Civil proceedings after criminal proceedings**

4 The Federal Court may not make a civil penalty order against a
5 person for a contravention of a civil penalty provision if the person
6 has been convicted of an offence constituted by conduct that is the
7 same, or substantially the same, as the conduct constituting the
8 contravention.

9 **93 Criminal proceedings during civil proceedings**

- 10 (1) Proceedings for a civil penalty order against a person for a
11 contravention of a civil penalty provision are stayed if:
12 (a) criminal proceedings are commenced or have already been
13 commenced against the person for an offence; and
14 (b) the offence is constituted by conduct that is the same, or
15 substantially the same, as the conduct alleged to constitute
16 the contravention.
- 17 (2) The proceedings for the order (the *civil proceedings*) may be
18 resumed if the person is not convicted of the offence. Otherwise,
19 the civil proceedings are dismissed.

20 **94 Criminal proceedings after civil proceedings**

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

26 **95 Evidence given in civil proceedings not admissible in criminal
27 proceedings**

- 28 (1) Evidence of information given, or evidence of production of
29 documents, by an individual is not admissible in criminal
30 proceedings against the individual if:

- 1 (a) the individual previously gave the evidence or produced the
2 documents in proceedings for a civil penalty order against the
3 individual for an alleged contravention of a civil penalty
4 provision (whether or not the order was made); and
5 (b) the conduct alleged to constitute the offence is the same, or
6 substantially the same, as the conduct alleged to constitute
7 the contravention.
- 8 (2) However, subsection (1) does not apply to criminal proceedings in
9 relation to the falsity of the evidence given by the individual in the
10 proceedings for the civil penalty order.
11

Section 96

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2 **Division 3—Miscellaneous**

3 **96 Ancillary contravention of civil penalty provisions**

4

(1) A person must not:

5

(a) attempt to contravene a civil penalty provision; or

6

(b) aid, abet, counsel or procure a contravention of a civil penalty provision; or

7

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(c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or

9

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(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or

11

12

(e) conspire with others to effect a contravention of a civil penalty provision.

13

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Note: Section 98 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to this subsection.

15

16

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Civil penalty

18

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

19

20 **97 Mistake of fact**

21

(1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:

22

23

(a) at or before the time of the conduct constituting the contravention, the person:

24

25

(i) considered whether or not facts existed; and

26

(ii) was under a mistaken but reasonable belief about those facts; and

27

28

(b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

29

30

(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

31

- 1 (a) the person had considered, on a previous occasion, whether
2 those facts existed in the circumstances surrounding that
3 occasion; and
4 (b) the person honestly and reasonably believed that the
5 circumstances surrounding the present occasion were the
6 same, or substantially the same, as those surrounding the
7 previous occasion.
- 8 (3) A person who wishes to rely on subsection (1) or (2) in
9 proceedings for a civil penalty order bears an evidential burden in
10 relation to that matter.

11 **98 State of mind**

- 12 (1) In proceedings for a civil penalty order against a person for a
13 contravention of a civil penalty provision (other than subsection
14 96(1)), it is not necessary to prove:
15 (a) the person's intention; or
16 (b) the person's knowledge; or
17 (c) the person's recklessness; or
18 (d) the person's negligence; or
19 (e) any other state of mind of the person.
- 20 (2) Subsection (1) of this section does not affect the operation of
21 section 97 (mistake of fact).

22 **99 Civil penalty provisions contravened by employees, agents or**
23 **officers**

24 If an element of a civil penalty provision is done by an employee,
25 agent or officer of a body corporate acting within the actual or
26 apparent scope of his or her employment, or within his or her
27 actual or apparent authority, the element must also be attributed to
28 the body corporate.
29

Section 100

1

2 **Part 3—Infringement notices**
3

4 **100 When an infringement notice may be given**

- 5 (1) If an authorised officer has reasonable grounds to believe that a
6 person has contravened an offence of strict liability in Chapter 3,
7 the authorised officer may give to the person an infringement
8 notice for the alleged contravention.
- 9 (2) The infringement notice must be given within 12 months after the
10 day on which the contravention is alleged to have taken place.
- 11 (3) A single infringement notice must relate only to a single
12 contravention of a single provision.

13 **101 Matters to be included in an infringement notice**

- 14 An infringement notice must:
- 15 (a) be identified by a unique number; and
16 (b) state the day on which it is given; and
17 (c) state the name of the person to whom the notice is given; and
18 (d) state the name of the person who gave the notice; and
19 (e) give brief details of the alleged contravention, including:
20 (i) the provision that was allegedly contravened; and
21 (ii) the maximum penalty that a court could impose for the
22 contravention; and
23 (iii) the time (if known) and day of, and the place of, the
24 alleged contravention; and
25 (f) state that the following amount is payable under the notice:
26 (i) if the person is a body corporate—60 penalty units;
27 (ii) otherwise—12 penalty units; and
28 (g) give an explanation of how payment of the amount is to be
29 made; and
30 (h) state that, if the person to whom the notice is given pays the
31 amount within 28 days after the day the notice is given, then

Section 102

- 1 (unless the notice is withdrawn) neither criminal proceedings,
2 nor proceedings for a civil penalty order, will be brought in
3 relation to the alleged contravention; and
- 4 (i) state that payment of the amount is not an admission of guilt
5 or liability; and
- 6 (j) state that the person may apply to the Secretary to have the
7 period in which to pay the amount extended; and
- 8 (k) state that the person may choose not to pay the amount and, if
9 the person does so, the person may be prosecuted in a court
10 for the alleged contravention, or proceedings for a civil
11 penalty order may be brought in relation to the alleged
12 contravention; and
- 13 (l) set out how the notice can be withdrawn; and
- 14 (m) state that if the notice is withdrawn:
- 15 (i) any amount paid under the notice must be refunded; and
- 16 (ii) the person may be prosecuted in a court for the alleged
17 contravention, or proceedings for a civil penalty order
18 may be brought in relation to the alleged contravention;
19 and
- 20 (n) state that the person may make written representations to the
21 Secretary seeking the withdrawal of the notice.

22 **102 Extension of time to pay amount**

- 23 (1) A person to whom an infringement notice has been given may
24 apply to the Secretary for an extension of the period referred to in
25 paragraph 101(h).
- 26 (2) If the application is made before the end of that period, the
27 Secretary may, in writing, extend that period. The Secretary may
28 do so before or after the end of that period.
- 29 (3) If the Secretary extends that period, a reference in this Part, or in a
30 notice or other instrument under this Part, to the period referred to
31 in paragraph 101(h) is taken to be a reference to that period so
32 extended.
- 33 (4) If the Secretary does not extend that period, a reference in this Part,
34 or in a notice or other instrument under this Part, to the period

Section 103

- 1 referred to in paragraph 101(h) is taken to be a reference to the
2 period that ends on the later of the following days:
3 (a) the day that is the last day of the period referred to in
4 paragraph 101(h);
5 (b) the day that is 7 days after the day the person was given
6 notice of the Secretary's decision not to extend.
- 7 (5) The Secretary may extend the period more than once under
8 subsection (2).

9 **103 Withdrawal of an infringement notice**

10 *Representations seeking withdrawal of notice*

- 11 (1) A person to whom an infringement notice has been given may
12 make written representations to the Secretary seeking the
13 withdrawal of the notice.

14 *Withdrawal of notice*

- 15 (2) The Secretary may withdraw an infringement notice given to a
16 person (whether or not the person has made written representations
17 seeking the withdrawal).
- 18 (3) When deciding whether or not to withdraw an infringement notice
19 (the *relevant infringement notice*), the Secretary:
20 (a) must take into account any written representations seeking
21 the withdrawal that were given by the person to the
22 Secretary; and
23 (b) may take into account the following:
24 (i) whether a court has previously imposed a penalty on the
25 person for a contravention of an offence or civil penalty
26 provision in this Act;
27 (ii) the circumstances of the alleged contravention;
28 (iii) whether the person has paid an amount, stated in an
29 earlier infringement notice, for an offence that is
30 constituted by conduct that is the same, or substantially
31 the same, as the conduct alleged to constitute the
32 offence in the relevant infringement notice;

1 (iv) any other matter the Secretary considers relevant.

2 *Notice of withdrawal*

3 (4) Notice of the withdrawal of the infringement notice must be given
4 to the person. The withdrawal notice must state:

- 5 (a) the person's name and address; and
6 (b) the day the infringement notice was given; and
7 (c) the identifying number of the infringement notice; and
8 (d) that the infringement notice is withdrawn; and
9 (e) that the person may be prosecuted in a court for the alleged
10 contravention, or proceedings for a civil penalty order may
11 be brought in relation to the alleged contravention.

12 *Refund of amount if infringement notice withdrawn*

13 (5) If:

- 14 (a) the Secretary withdraws the infringement notice; and
15 (b) the person has already paid the amount stated in the notice;
16 the Commonwealth must refund to the person an amount equal to
17 the amount paid.

18 **104 Effect of payment of amount**

19 (1) If the person to whom an infringement notice for an alleged
20 contravention of a provision is given pays the amount stated in the
21 notice before the end of the period referred to in paragraph 101(h):

- 22 (a) any liability of the person for the alleged contravention is
23 discharged; and
24 (b) neither criminal proceedings, nor proceedings for a civil
25 penalty order, may be brought in relation to the alleged
26 contravention; and
27 (c) the person is not regarded as having admitted guilt or liability
28 for the alleged contravention; and
29 (d) the person is not regarded as having been convicted of the
30 alleged offence.

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

Section 105

105 Effect of this Part

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This Part does not:

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

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Chapter 6—Miscellaneous provisions

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Part 1—Simplified outline

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106 Simplified outline

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The following is a simplified outline of this Chapter:

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- Part 2 of this Chapter contains miscellaneous provisions, such as the Secretary's delegation power and reporting to Parliament on contraventions of this Act.

Section 107

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2 **Part 2—Miscellaneous provisions**
3

4 **107 Delegation**

5 (1) The Secretary may, in writing, delegate to an SES employee, or
6 acting SES employee, in the Department all or any of the
7 Secretary's powers or functions under this Act.

8 Note: *SES employee* and *acting SES employee* are defined in section 2B of
9 the *Acts Interpretation Act 1901*.

10 (2) In exercising powers or functions delegated under subsection (1),
11 the delegate must comply with any directions of the Secretary.

12 **108 Reports to Parliament**

13 (1) As soon as practicable after the end of each financial year, the
14 Minister must cause to be prepared a report on:

- 15 (a) the number and nature of any contraventions of this Act
16 occurring in the financial year; and
17 (b) action taken in response to each contravention.

18 (2) A person who prepares a report under subsection (1) must give a
19 copy to the Minister.

20 (3) The Minister must cause the report to be included in the annual
21 report of the Department for that financial year.

22 **109 Regulations**

23 (1) The Governor-General may make regulations prescribing matters:
24 (a) required or permitted by this Act to be prescribed; or
25 (b) necessary or convenient to be prescribed for carrying out or
26 giving effect to this Act.

27 (2) Without limiting subsection (1), the regulations may, for the
28 purposes of section 46 of the *Trans-Tasman Mutual Recognition*

Section 109

1 *Act 1997*, declare that this Act is exempt from the operation of that
2 Act.

3 Note: The exemption operates for a period of up to 12 months (see
4 subsection 46(4) of that Act).