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HOUSE OF REPRESENTATIVES

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**Regulatory Powers (Standard
Provisions) Bill 2014**

No. , 2014

(Attorney-General)

**A Bill for an Act in relation to monitoring,
investigation and enforcement by regulatory
agencies, and for related purposes**

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1 **A Bill for an Act in relation to monitoring,**
2 **investigation and enforcement by regulatory**
3 **agencies, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

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

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

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

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

13 **3 Simplified outline**

14 The following is a simplified outline of this Act:

15 This Act creates a framework for each of the following:
16 (a) monitoring whether provisions of an Act or a legislative
17 instrument have been, or are being, complied with;

- 1 (b) monitoring whether information given in compliance, or
 2 purported compliance, with a provision of an Act or a
 3 legislative instrument is correct;
 4 (c) gathering material that relates to the contravention of an
 5 offence provision or a civil penalty provision;
 6 (d) the use of civil penalties to enforce provisions;
 7 (e) the use of infringement notices where there is a
 8 reasonable belief that a provision has been contravened;
 9 (f) the acceptance and enforcement of undertakings relating
 10 to compliance with provisions;
 11 (g) the use of injunctions to enforce provisions.

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

15 4 Dictionary

16 In this Act:

17 ***authorised applicant:***

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

24 ***authorised person:***

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

Section 4

- 1 ***civil penalty order*** has the meaning given by subsection 82(4).
- 2 ***civil penalty provision*** has the meaning given by subsection 79(2).
- 3 ***conduct*** means:
- 4 (a) an act; or
- 5 (b) a failure to act.
- 6 ***damage***, in relation to data, includes damage by erasure of data or
- 7 addition of other data.
- 8 ***enforceable***:
- 9 (a) in Part 4 (civil penalty provisions)—has the meaning given
- 10 by section 79; and
- 11 (b) in Part 6 (enforceable undertakings)—has the meaning given
- 12 by section 111; and
- 13 (c) in Part 7 (injunctions)—has the meaning given by
- 14 section 118.
- 15 ***evidential burden***, in relation to a matter, means the burden of
- 16 adducing or pointing to evidence that suggests a reasonable
- 17 possibility that the matter exists or does not exist.
- 18 ***evidential material*** has the meaning given by section 39.
- 19 ***identity card***:
- 20 (a) in Part 2 (monitoring)—has the meaning given by section 13;
- 21 and
- 22 (b) in Part 3 (investigation)—has the meaning given by
- 23 section 43.
- 24 ***infringement officer*** has the meaning given by section 101.
- 25 ***investigation powers*** has the meaning given by sections 49, 50, 51
- 26 and 52.
- 27 ***investigation warrant*** means:
- 28 (a) a warrant issued by an issuing officer under section 70; or
- 29 (b) a warrant signed by an issuing officer under section 71.
- 30 ***issuing officer***:

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

5 **judicial officer** means:

- 6 (a) a magistrate; or
7 (b) a Judge of a court of a State or Territory; or
8 (c) a Federal Magistrate; or
9 (d) a Judge of the Federal Court of Australia.

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

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

13 **person assisting** an authorised person:

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

18 **premises** includes the following:

- 19 (a) a structure, building, vehicle, vessel or aircraft;
20 (b) a place (whether or not enclosed or built on);
21 (c) a part of a thing referred to in paragraph (a) or (b).

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

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

27 **relevant chief executive**:

- 28 (a) in Part 2 (monitoring)—has the meaning given by section 15;
29 and
30 (b) in Part 3 (investigation)—has the meaning given by
31 section 45; and

Section 5

1 (c) in Part 5 (infringement notices)—has the meaning given by
2 section 102.

3 **relevant court:**

4 (a) in Part 2 (monitoring)—has the meaning given by section 16;
5 and

6 (b) in Part 3 (investigation)—has the meaning given by
7 section 46; and

8 (c) in Part 4 (civil penalty provisions)—has the meaning given
9 by section 81; and

10 (d) in Part 6 (enforceable undertakings)—has the meaning given
11 by section 113; and

12 (e) in Part 7 (injunctions)—has the meaning given by
13 section 120.

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

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

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

21 **subject to monitoring:**

22 (a) in relation to a provision of an Act or a legislative
23 instrument—has the meaning given by section 8; and

24 (b) in relation to information given in compliance, or purported
25 compliance, with a provision of an Act or a legislative
26 instrument—has the meaning given by section 9.

27 **5 Binding the Crown**

28 This Act binds the Crown in each of its capacities.

1 **Part 2—Monitoring**

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

3 **6 Simplified outline**

4 The following is a simplified outline of this Part:

5 This Part creates a framework for monitoring whether the
6 provisions of an Act or a legislative instrument have been, or are
7 being, complied with.

8 It also creates a framework for monitoring whether information
9 given in compliance, or purported compliance, with a provision of
10 an Act or a legislative instrument is correct.

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

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

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

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

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

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

Part 2 Monitoring

Division 1 Outline and operation of this Part

Section 7

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

4 **7 Purpose and operation of this Part**

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- (1) The principal purpose of this Part is to create a framework for monitoring whether:
- (a) provisions of an Act or a legislative instrument have been, or are being, complied with; and
 - (b) information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct.

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- (2) However, for this Part to operate, either or both of the following must apply:
- (a) a provision of an Act or a legislative instrument must be made subject to monitoring under this Part;
 - (b) information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument must be made subject to monitoring under this Part.

19 **8 Provisions *subject to monitoring***

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

23 **9 Information *subject to monitoring***

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

1 **10 Related provisions**

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

8 **11 Authorised applicant**

- 9 (1) A person is an *authorised applicant* for the purposes of exercising
10 powers under this Part to determine whether:
11 (a) a provision subject to monitoring under this Part has been, or
12 is being, complied with; or
13 (b) information subject to monitoring under this Part is correct;
14 if an Act provides that the person is an authorised applicant in
15 relation to that provision or information for the purposes of this
16 Part.
- 17 (2) A person who is an *authorised applicant* for the purpose of
18 exercising powers mentioned in subsection (1) is also an
19 *authorised applicant* for the purposes of:
20 (a) exercising other powers under this Part; or
21 (b) performing functions or duties under this Part;
22 that are incidental to the powers mentioned in subsection (1).
- 23 (3) Without limiting subsection (1), an Act may provide that a person
24 is an authorised applicant in relation to a provision or information
25 for the purposes of this Part by:
26 (a) providing that a person of a specified class is an authorised
27 applicant in relation to the provision or information for the
28 purposes of this Part; or
29 (b) authorising another person to specify that a person, or a
30 person of a specified class, is an authorised applicant in
31 relation to the provision or information for the purposes of
32 this Part.

Section 12

1 **12 *Authorised person***

- 2 (1) A person is an ***authorised person*** for the purposes of exercising
3 powers under this Part to determine whether:
4 (a) a provision subject to monitoring under this Part has been, or
5 is being, complied with; or
6 (b) information subject to monitoring under this Part is correct;
7 if an Act provides that the person is an authorised person in
8 relation to that provision or information for the purposes of this
9 Part.
- 10 (2) A person who is an ***authorised person*** for the purpose of
11 exercising powers mentioned in subsection (1) is also an
12 ***authorised person*** for the purposes of:
13 (a) exercising other powers under this Part; or
14 (b) performing functions or duties under this Part;
15 that are incidental to the powers mentioned in subsection (1).
- 16 (3) Without limiting subsection (1), an Act may provide that a person
17 is an authorised person in relation to a provision or information for
18 the purposes of this Part by:
19 (a) providing that a person of a specified class is an authorised
20 person in relation to the provision or information for the
21 purposes of this Part; or
22 (b) authorising another person to specify that a person, or a
23 person of a specified class, is an authorised person in relation
24 to the provision or information for the purposes of this Part.

25 **13 *Identity card***

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

30 **14 *Issuing officer***

- 31 (1) A judicial officer is an ***issuing officer*** for the purposes of
32 exercising powers under this Part to determine whether:
-

- 1 (a) a provision subject to monitoring under this Part has been, or
2 is being, complied with; or
3 (b) information subject to monitoring under this Part is correct;
4 if an Act provides that the judicial officer is an issuing officer in
5 relation to that provision or information for the purposes of this
6 Part.
- 7 (2) A judicial officer who is an **issuing officer** for the purpose of
8 exercising powers mentioned in subsection (1) is also an **issuing**
9 **officer** for the purposes of exercising other powers under this Part
10 that are incidental to the powers mentioned in subsection (1).
- 11 (3) Without limiting subsection (1), an Act may provide that a judicial
12 officer is an issuing officer in relation to a provision or information
13 for the purposes of this Part by:
14 (a) providing that a judicial officer of a specified class is an
15 issuing officer in relation to the provision or information for
16 the purposes of this Part; or
17 (b) authorising another person to specify that a judicial officer,
18 or a judicial officer of a specified class, is an issuing officer
19 in relation to the provision or information for the purposes of
20 this Part.

21 **15 Relevant chief executive**

- 22 (1) A person is the **relevant chief executive** for the purposes of
23 exercising powers under this Part that relate to an authorised
24 person in relation to a provision or information for the purposes of
25 this Part, if an Act provides that the person is the relevant chief
26 executive for the purposes of this Part in relation to the provision
27 or information.
- 28 (2) A person who is the **relevant chief executive** for the purpose of
29 exercising powers mentioned in subsection (1) is also the **relevant**
30 **chief executive** for the purposes of:
31 (a) exercising other powers under this Part; or
32 (b) performing functions or duties under this Part;
33 that are incidental to the powers mentioned in subsection (1).

Part 2 Monitoring

Division 1 Outline and operation of this Part

Section 16

- 1 (3) Without limiting subsection (1), an Act may provide that a person
2 is the relevant chief executive in relation to a provision or
3 information for the purposes of this Part by:
4 (a) providing that a person who holds a specified office is the
5 relevant chief executive in relation to the provision or
6 information for those purposes; or
7 (b) authorising another person to specify that a person, or a
8 person who holds a specified office, is the relevant chief
9 executive in relation to the provision or information for those
10 purposes.

11 **16 Relevant court**

- 12 A court is a *relevant court* in relation to a matter that arises
13 because of:
14 (a) the exercise of powers by a person under this Part to
15 determine whether:
16 (i) a provision subject to monitoring under this Part has
17 been, or is being, complied with; or
18 (ii) information subject to monitoring under this Part is
19 correct; or
20 (b) the exercise of powers, or the performance of functions or
21 duties, under this Part that are incidental to the powers
22 mentioned in paragraph (a);
23 if an Act provides that the court is a relevant court in relation to
24 that provision or information for the purposes of this Part.

25 **17 Privileges not abrogated**

26 *Self-incrimination*

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

1

Legal professional privilege

2

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

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

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- (b) the document would be privileged from being produced on the ground of legal professional privilege.

9

10

Other legislation not affected

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

12

13

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

2 **Subdivision A—Monitoring powers**

3 **18 Entering premises by consent or under a warrant**

- 4 (1) An authorised person may enter any premises and exercise the
5 monitoring powers for either or both of the following purposes:
6 (a) determining whether a provision subject to monitoring under
7 this Part has been, or is being, complied with;
8 (b) determining whether information subject to monitoring under
9 this Part is correct.

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

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

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

18 **19 General monitoring powers**

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

- 21 (a) the power to search the premises and any thing on the
22 premises;
23 (b) the power to examine or observe any activity conducted on
24 the premises;
25 (c) the power to inspect, examine, take measurements of or
26 conduct tests on any thing on the premises;
27 (d) the power to make any still or moving image or any
28 recording of the premises or any thing on the premises;
29 (e) the power to inspect any document on the premises;
30 (f) the power to take extracts from, or make copies of, any such
31 document;

- 1 (g) the power to take onto the premises such equipment and
2 materials as the authorised person requires for the purpose of
3 exercising powers in relation to the premises;
4 (h) the powers set out in subsections 20(1) and (4), 21(2) and
5 22(1).

6 **20 Operating electronic equipment**

- 7 (1) The **monitoring powers** include the power to:
8 (a) operate electronic equipment on the premises; and
9 (b) use a disk, tape or other storage device that:
10 (i) is on the premises; and
11 (ii) can be used with the equipment or is associated with it.
- 12 (2) The **monitoring powers** include the powers mentioned in
13 subsection (4) if relevant data is found in the exercise of the power
14 under subsection (1).
- 15 (3) **Relevant data** means information relevant to determining whether:
16 (a) a provision that is subject to monitoring under this Part has
17 been, or is being, complied with; or
18 (b) information subject to monitoring under this Part is correct.
- 19 (4) The powers are as follows:
20 (a) the power to operate electronic equipment on the premises to
21 put the relevant data in documentary form and remove the
22 documents so produced from the premises;
23 (b) the power to operate electronic equipment on the premises to
24 transfer the relevant data to a disk, tape or other storage
25 device that:
26 (i) is brought to the premises for the exercise of the power;
27 or
28 (ii) is on the premises and the use of which for that purpose
29 has been agreed in writing by the occupier of the
30 premises;
31 and remove the disk, tape or other storage device from the
32 premises.

Part 2 Monitoring

Division 2 Powers of authorised persons

Section 21

- 1 (5) An authorised person may operate electronic equipment as
2 mentioned in subsection (1) or (4) only if the authorised person
3 believes on reasonable grounds that the operation of the equipment
4 can be carried out without damage to the equipment.

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

6 **21 Securing electronic equipment to obtain expert assistance**

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

9 *Securing equipment*

- 10 (2) The **monitoring powers** include the power to secure any electronic
11 equipment that is on the premises if the authorised person suspects
12 on reasonable grounds that:

- 13 (a) there is relevant data on the premises; and
14 (b) the relevant data may be accessible by operating the
15 equipment; and
16 (c) expert assistance is required to operate the equipment; and
17 (d) the relevant data may be destroyed, altered or otherwise
18 interfered with, if the authorised person does not take action
19 under this subsection.

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

- 22 (3) The authorised person must give notice to the occupier of the
23 premises, or another person who apparently represents the
24 occupier, of:

- 25 (a) the authorised person's intention to secure the equipment;
26 and
27 (b) the fact that the equipment may be secured for up to 24
28 hours.

29 *Period equipment may be secured*

- 30 (4) The equipment may be secured until the earlier of the following
31 happens:

- 32 (a) the 24-hour period ends;
-

1 (b) the equipment has been operated by the expert.

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

3 *Extensions*

4 (5) The authorised person may apply to an issuing officer for an
5 extension of the 24-hour period if the authorised person believes on
6 reasonable grounds that the equipment needs to be secured for
7 longer than that period.

8 (6) Before making the application, the authorised person must give
9 notice to the occupier of the premises, or another person who
10 apparently represents the occupier, of his or her intention to apply
11 for an extension. The occupier or other person is entitled to be
12 heard in relation to that application.

13 (7) The 24-hour period may be extended more than once.

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

16 **22 Securing evidence of the contravention of a related provision**

17 (1) The *monitoring powers* include the power to secure a thing for a
18 period not exceeding 24 hours if:

19 (a) the thing is found during the exercise of monitoring powers
20 on the premises; and

21 (b) an authorised person believes on reasonable grounds that:

22 (i) a related provision has been contravened with respect to
23 the thing; or

24 (ii) the thing affords evidence of the contravention of a
25 related provision; or

26 (iii) the thing is intended to be used for the purpose of
27 contravening a related provision; and

28 (c) the authorised person believes on reasonable grounds that:

29 (i) it is necessary to secure the thing in order to prevent it
30 from being concealed, lost or destroyed before a warrant
31 to seize the thing is obtained; and

32 (ii) it is necessary to secure the thing without a warrant
33 because the circumstances are serious and urgent.

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

3 *Extensions*

4 (2) The authorised person may apply to an issuing officer for an
5 extension of the 24-hour period if the authorised person believes on
6 reasonable grounds that the thing needs to be secured for more than
7 that period.

8 (3) Before making the application, the authorised person must give
9 notice to the occupier of the premises, or another person who
10 apparently represents the occupier, of his or her intention to apply
11 for an extension. The occupier or other person is entitled to be
12 heard in relation to that application.

13 (4) The 24-hour period may be extended more than once.

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

16 **23 Persons assisting authorised persons**

17 *Authorised persons may be assisted by other persons*

18 (1) An authorised person may be assisted by other persons in
19 exercising powers or performing functions or duties under this
20 Part, if:

- 21 (a) that assistance is necessary and reasonable; and
22 (b) another Act empowers the authorised person to be assisted.

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

25 *Powers, functions and duties of a person assisting*

- 26 (2) A person assisting the authorised person:
27 (a) may enter the premises; and
28 (b) may exercise powers under this Part for the purposes of
29 assisting the authorised person to determine whether:
30 (i) a provision subject to monitoring under this Part has
31 been, or is being, complied with; or

- 1 (ii) information subject to monitoring under this Part is
2 correct; and
3 (c) may exercise powers and perform functions and duties under
4 this Part that are incidental to the powers mentioned in
5 paragraph (b); and
6 (d) must do so in accordance with a direction given to the person
7 assisting by the authorised person.
- 8 (3) A power exercised by a person assisting the authorised person as
9 mentioned in subsection (2) is taken for all purposes to have been
10 exercised by the authorised person.
- 11 (4) A function or duty performed by a person assisting the authorised
12 person as mentioned in subsection (2) is taken for all purposes to
13 have been performed by the authorised person.
- 14 (5) If a direction is given under paragraph (2)(d) in writing, the
15 direction is not a legislative instrument.

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

18 **24 Asking questions and seeking production of documents**

19 *Application*

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

25 *Entry with consent*

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

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Section 24

1

Entry under a monitoring warrant

2

(3) If the entry is authorised by a monitoring warrant, the authorised person may require any person on the premises to answer any questions, and produce any document, relating to:

3

4

5

(a) the operation of the provision; or

6

(b) the information.

7

(4) A person is not subject to a requirement under subsection (3) if:

8

(a) the person does not possess the information or document required; and

9

10

(b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.

11

12

13

Offence

14

(5) A person commits an offence if:

15

(a) the person is subject to a requirement under subsection (3); and

16

17

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

18

Penalty for contravention of this subsection: 30 penalty units.

1 **Division 3—Obligations and incidental powers of**
2 **authorised persons**

3 **25 Consent**

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

24 **26 Announcement before entry under warrant**

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

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

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

6 **27 Authorised person to be in possession of warrant**

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

9 **28 Details of warrant etc. to be given to occupier**

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

21 **29 Compensation for damage to electronic equipment**

- 22 (1) This section applies if:
23 (a) as a result of electronic equipment being operated as
24 mentioned in this Part:
25 (i) damage is caused to the equipment; or
26 (ii) the data recorded on the equipment is damaged; or
27 (iii) programs associated with the use of the equipment, or
28 with the use of the data, are damaged or corrupted; and
29 (b) the damage or corruption occurs because:
30 (i) insufficient care was exercised in selecting the person
31 who was to operate the equipment; or

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

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

2 **30 Right to observe execution of warrant**

3 (1) The occupier of premises to which a monitoring warrant relates, or
4 another person who apparently represents the occupier, is entitled
5 to observe the execution of the monitoring warrant if the occupier
6 or other person is present at the premises while the warrant is being
7 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 **31 Responsibility to provide facilities and assistance**

13 (1) The occupier of premises to which a monitoring warrant relates, or
14 another person who apparently represents the occupier, must
15 provide:

16 (a) an authorised person executing the warrant; and
17 (b) any person assisting the authorised person;
18 with all reasonable facilities and assistance for the effective
19 exercise of their powers.

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

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

1 **Division 5—Monitoring warrants**

2 **32 Monitoring warrants**

3 *Application for warrant*

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

6 *Issue of warrant*

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

20 *Content of warrant*

- 21 (4) The warrant must:
22 (a) describe the premises to which the warrant relates; and
23 (b) state that the warrant is issued under this section; and
24 (c) state the purpose for which the warrant is issued; and
25 (d) authorise one or more authorised persons (whether or not
26 named in the warrant) from time to time while the warrant
27 remains in force:
28 (i) to enter the premises; and
29 (ii) to exercise the powers set out in this Part in relation to
30 the premises; and

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- 1 (e) state whether entry is authorised to be made at any time of
2 the day or during specified hours of the day; and
3 (f) specify the day (not more than 3 months after the issue of the
4 warrant) on which the warrant ceases to be in force.

1 **Division 6—Extension of periods in which things secured**

2 **33 Extension of periods in which things secured**

3 *Application*

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

7 *Granting extension*

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

23 *Content of order*

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

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

2 **34 Powers of issuing officers**

3 *Powers conferred personally*

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

8 *Powers need not be accepted*

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

10 *Protection and immunity*

- 11 (3) An issuing officer exercising a power conferred by this Part has the
12 same protection and immunity as if the issuing officer were
13 exercising the power:
14 (a) as the court of which the issuing officer is a member; or
15 (b) as a member of the court of which the issuing officer is a
16 member.

1 **Division 8—Identity cards**

2 **35 Identity cards**

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

5 *Form of identity card*

- 6 (2) The identity card must:
7 (a) be in the form prescribed by the regulations; and
8 (b) contain a photograph that is no more than 1 year old of the
9 authorised person.

10 *Offence*

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

17 Penalty: 1 penalty unit.

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

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

20 *Exception—card lost or destroyed*

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

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

25 *Authorised person must carry card*

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

1 **Part 3—Investigation**

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

3 **36 Simplified outline**

4 The following is a simplified outline of this Part:

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

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

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

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

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

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

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

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

4 **37 Purpose and operation of this Part**

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

11 **38 Provisions *subject to investigation***

- 12 (1) An offence against an Act or a legislative instrument is ***subject to***
13 ***investigation*** under this Part if an Act provides that the offence is
14 subject to investigation under this Part.
- 15 (2) A civil penalty provision under an Act or a legislative instrument is
16 ***subject to investigation*** under this Part if an Act provides that the
17 civil penalty provision is subject to investigation under this Part.

18 **39 *Evidential material***

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

- 20 (a) a thing with respect to which an offence provision or a civil
21 penalty provision subject to investigation under this Part has
22 been contravened or is suspected, on reasonable grounds, to
23 have been contravened;
- 24 (b) a thing that there are reasonable grounds for suspecting will
25 afford evidence as to the contravention of such an offence
26 provision or a civil penalty provision;
- 27 (c) a thing that there are reasonable grounds for suspecting is
28 intended to be used for the purpose of contravening such an
29 offence provision or a civil penalty provision.

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1 **40 Related provisions**

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

5 **41 Authorised applicant**

6 (1) A person is an *authorised applicant* for the purposes of exercising
7 powers under this Part in relation to evidential material if an Act
8 provides that the person is an authorised applicant in relation to
9 evidential material for the purposes of this Part.

10 (2) A person who is an *authorised applicant* for the purpose of
11 exercising powers mentioned in subsection (1) is also an
12 *authorised applicant* for the purposes of:

- 13 (a) exercising other powers under this Part; or
14 (b) performing functions or duties under this Part;
15 that are incidental to the powers mentioned in subsection (1).

16 (3) Without limiting subsection (1), an Act may provide that a person
17 is an authorised applicant in relation to evidential material for the
18 purposes of this Part by:

- 19 (a) providing that a person of a specified class is an authorised
20 applicant in relation to the evidential material for the
21 purposes of this Part; or
22 (b) authorising another person to specify that a person, or a
23 person of a specified class, is an authorised applicant in
24 relation to the evidential material for the purposes of this
25 Part.

26 **42 Authorised person**

27 (1) A person is an *authorised person* for the purposes of exercising
28 powers under this Part in relation to evidential material if an Act
29 provides that the person is an authorised person in relation to the
30 evidential material for the purposes of this Part.

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

16 **43 Identity card**

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

21 **44 Issuing officer**

- 22 (1) A judicial officer is an **issuing officer** for the purposes of
23 exercising powers under this Part in relation to evidential material,
24 if an Act provides that the judicial officer is an issuing officer in
25 relation to the evidential material for the purposes of this Part.
- 26 (2) A judicial officer who is an **issuing officer** for the purpose of
27 exercising powers mentioned in subsection (1) is also an **issuing**
28 **officer** for the purposes of exercising other powers under this Part
29 that are incidental to the powers mentioned in subsection (1).
- 30 (3) Without limiting subsection (1), an Act may provide that a judicial
31 officer is an issuing officer in relation to evidential material for the
32 purposes of this Part by:

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- 1 (a) providing that a judicial officer of a specified class is an
2 issuing officer in relation to the evidential material for the
3 purposes of this Part; or
4 (b) authorising another person to specify that a judicial officer,
5 or a judicial officer of a specified class, is an issuing officer
6 in relation to the evidential material for the purposes of this
7 Part.

8 **45 Relevant chief executive**

- 9 (1) A person is the *relevant chief executive* for the purposes of
10 exercising powers under this Part in relation to evidential material,
11 if an Act provides that the person is the relevant chief executive in
12 relation to the evidential material for the purposes of this Part.
- 13 (2) A person who is the *relevant chief executive* for the purpose of
14 exercising powers mentioned in subsection (1) is also the *relevant*
15 *chief executive* for the purposes of:
16 (a) exercising other powers under this Part; or
17 (b) performing functions or duties under this Part;
18 that are incidental to the powers mentioned in subsection (1).
- 19 (3) Without limiting subsection (1), an Act may provide that a person
20 is the relevant chief executive in relation to evidential material for
21 the purposes of this Part by:
22 (a) providing that a person who holds a specified office is the
23 relevant chief executive in relation to the evidential material
24 for those purposes; or
25 (b) authorising another person to specify that a person, or a
26 person who holds a specified office, is the relevant chief
27 executive in relation to the evidential material for those
28 purposes.

29 **46 Relevant court**

- 30 A court is a *relevant court* in relation to a matter that arises
31 because of:
32 (a) the exercise of powers by a person under this Part in relation
33 to evidential material; or

- 1 (b) the exercise of powers, or the performance of functions or
2 duties, under this Part that are incidental to the powers
3 mentioned in paragraph (a);
4 if an Act provides that the court is a relevant court in relation to
5 that evidential material for the purposes of this Part.

6 **47 Privileges not abrogated**

7 *Self-incrimination*

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

13 *Legal professional privilege*

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

22 *Other legislation not affected*

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

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

2 **Subdivision A—Investigation powers**

3 **48 Entering premises by consent or under a warrant**

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

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

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

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

17 **49 General investigation powers**

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

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

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

12 **50 Operating electronic equipment**

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

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

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

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

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

20 **51 Securing electronic equipment to obtain expert assistance**

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

23 *Securing equipment*

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

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

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

6 (3) The authorised person must give notice to the occupier of the
7 premises, or another person who apparently represents the
8 occupier, of:

9 (a) the authorised person's intention to secure the equipment;
10 and

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

13 *Period equipment may be secured*

14 (4) The equipment may be secured until the earlier of the following
15 happens:

16 (a) the 24-hour period ends;

17 (b) the equipment has been operated by the expert.

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

19 *Extensions*

20 (5) The authorised person may apply to an issuing officer for an
21 extension of the 24-hour period, if the authorised person believes
22 on reasonable grounds that the equipment needs to be secured for
23 longer than that period.

24 (6) Before making the application, the authorised person must give
25 notice to the occupier of the premises, or another person who
26 apparently represents the occupier, of the authorised person's
27 intention to apply for an extension. The occupier or other person is
28 entitled to be heard in relation to that application.

29 (7) The 24-hour period may be extended more than once.

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

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1 **52 Seizing evidence of related provisions**

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

20 **53 Persons assisting authorised persons**

21 *Authorised persons may be assisted by other persons*

- 22 (1) An authorised person may be assisted by other persons in
23 exercising powers or performing functions or duties under this
24 Part, if:
- 25 (a) that assistance is necessary and reasonable; and
26 (b) another Act empowers the authorised person to be assisted.
- 27 A person giving such assistance is a *person assisting* the
28 authorised person.

29 *Powers, functions and duties of a person assisting*

- 30 (2) A person assisting the authorised person:
- 31 (a) may enter the premises; and

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

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

18 **54 Asking questions and seeking production of documents**

19 *Application*

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

22 *Entry with consent*

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

27 *Entry under an investigation warrant*

- 28 (3) If the entry is authorised by an investigation warrant, the
29 authorised person may require any person on the premises to

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1 answer any questions, and produce any document, relating to
2 evidential material of the kind specified in the warrant.

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

9 *Offence*

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

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

1 **Division 3—Obligations and incidental powers of**
2 **authorised persons**

3 **55 Consent**

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

24 **56 Announcement before entry under warrant**

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

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

57 Authorised person to be in possession of warrant

- 20 An authorised person executing an investigation warrant must be in
21 possession of:
22 (a) the warrant issued by the issuing officer under section 70, or
23 a copy of the warrant as so issued; or
24 (b) the form of warrant completed under subsection 71(6), or a
25 copy of the form as so completed.
26

58 Details of warrant etc. to be given to occupier

- 27 (1) An authorised person must comply with subsection (2) if:
28 (a) an investigation warrant is being executed in relation to
29 premises; and
30 (b) the occupier of the premises, or another person who
31 apparently represents the occupier, is present at the premises.
32

- 1 (2) The authorised person executing the warrant must, as soon as
2 practicable:
3 (a) do one of the following:
4 (i) if the warrant was issued under section 70—make a
5 copy of the warrant available to the occupier or other
6 person (which need not include the signature of the
7 issuing officer who issued it);
8 (ii) if the warrant was signed under section 71—make a
9 copy of the form of warrant completed under
10 subsection 71(6) available to the occupier or other
11 person; and
12 (b) inform the occupier or other person in writing of the rights
13 and responsibilities of the occupier or other person under
14 Division 4.

15 **59 Completing execution after temporary cessation**

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

30 *Application for extension in emergency situation*

- 31 (3) An authorised person, or person assisting, may apply to an issuing
32 officer for an extension of the 12-hour period mentioned in
33 subparagraph (2)(b)(ii) if:
34 (a) there is an emergency situation; and
-

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1 (b) the authorised person or person assisting believes on
2 reasonable grounds that the authorised person and the
3 persons assisting will not be able to return to the premises
4 within that period.

5 (4) If it is practicable to do so, before making the application, the
6 authorised person or person assisting must give notice to the
7 occupier of the premises of his or her intention to apply for an
8 extension.

9 *Extension in emergency situation*

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

19 **60 Completing execution of warrant stopped by court order**

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

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

26 **61 Compensation for damage to electronic equipment**

27 (1) This section applies if:
28 (a) as a result of electronic equipment being operated as
29 mentioned in this Part:
30 (i) damage is caused to the equipment; or
31 (ii) the data recorded on the equipment is damaged; or

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

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

2 **62 Right to observe execution of warrant**

3 (1) The occupier of premises to which an investigation warrant relates,
4 or another person who apparently represents the occupier, is
5 entitled to observe the execution of the investigation 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 **63 Responsibility to provide facilities and assistance**

13 (1) The occupier of premises to which an investigation warrant relates,
14 or another person who apparently represents the occupier, must
15 provide:

16 (a) an authorised person executing the warrant; and

17 (b) any person assisting the authorised person;

18 with all reasonable facilities and assistance for the effective
19 exercise of their powers.

20 (2) A person commits an offence if:

21 (a) the person is subject to subsection (1); and

22 (b) the person fails to comply with that subsection.

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

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

2 **64 Copies of seized things to be provided**

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

22 **65 Receipts for seized things**

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

26 **66 Return of seized things**

- 27 (1) The relevant chief executive must take reasonable steps to return a
- 28 thing seized under this Part when the earliest of the following
- 29 happens:

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- 1 (a) the reason for the thing's seizure no longer exists;
2 (b) it is decided that the thing is not to be used in evidence;
3 (c) the period of 60 days after the thing's seizure ends.

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

5 *Exceptions*

- 6 (2) Subsection (1):
7 (a) is subject to any contrary order of a court; and
8 (b) does not apply if the thing:
9 (i) is forfeited or forfeitable to the Commonwealth; or
10 (ii) is the subject of a dispute as to ownership.
- 11 (3) The relevant chief executive is not required to take reasonable
12 steps to return a thing because of paragraph (1)(c) if:
13 (a) proceedings in respect of which the thing may afford
14 evidence were instituted before the end of the 60 days and
15 those proceedings (and any appeal from those proceedings)
16 have not been completed; or
17 (b) the thing may continue to be retained because of an order
18 under section 67; or
19 (c) the Commonwealth or the relevant chief executive is
20 otherwise authorised (by a law, or an order of a court, of the
21 Commonwealth or of a State or Territory) to retain, destroy,
22 dispose of or otherwise deal with the thing.

23 *Return of thing*

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

27 **67 Issuing officer may permit a thing to be retained**

- 28 (1) The relevant chief executive may apply to an issuing officer for an
29 order 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:
32 (a) 60 days after the seizure; or
-

- 1 (b) a period previously specified in an order of an issuing officer
2 under this section.
- 3 (2) Before making the application, the relevant chief executive must:
4 (a) take reasonable steps to discover who has an interest in the
5 retention of the thing; and
6 (b) if it is practicable to do so, notify each person whom the
7 relevant chief executive believes to have such an interest of
8 the proposed application.
- 9 (3) Any person notified under paragraph (2)(b) is entitled to be heard
10 in relation to the application.

11 *Order to retain thing*

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

24 **68 Disposal of things**

- 25 (1) The relevant chief executive may dispose of a thing seized under
26 this Part if:
27 (a) the relevant chief executive has taken reasonable steps to
28 return the thing to a person; and
29 (b) either:
30 (i) the relevant chief executive has been unable to locate
31 the person; or
32 (ii) the person has refused to take possession of the thing.

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- 1 (2) The relevant chief executive may dispose of the thing in such
2 manner as the relevant chief executive thinks appropriate.

3 **69 Compensation for acquisition of property**

- 4 (1) If the operation of section 68 would result in an acquisition of
5 property from a person otherwise than on just terms, the
6 Commonwealth is liable to pay a reasonable amount of
7 compensation to the person.

- 8 (2) If the Commonwealth and the person do not agree on the amount
9 of the compensation, the person may institute proceedings in a
10 relevant court for the recovery from the Commonwealth of such
11 reasonable amount of compensation as the court determines.

- 12 (3) In this section:

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

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

1 **Division 6—Investigation warrants**

2 **70 Investigation warrants**

3 *Application for warrant*

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

6 *Issue of warrant*

- 7 (2) The issuing officer may issue the warrant if the issuing officer is
8 satisfied, by information on oath or affirmation, that there are
9 reasonable grounds for suspecting that there is, or there may be
10 within the next 72 hours, evidential material on the premises.

- 11 (3) However, the issuing officer must not issue the warrant unless the
12 authorised applicant or some other person has given to the issuing
13 officer, either orally or by affidavit, such further information (if
14 any) as the issuing officer requires concerning the grounds on
15 which the issue of the warrant is being sought.

16 *Content of warrant*

- 17 (4) The warrant must:
18 (a) state the offence provision or offence provisions, or civil
19 penalty provision or civil penalty provisions, to which the
20 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 kinds of evidential material to be searched for
24 under the warrant; and
25 (e) state that evidential material of the kind specified may be
26 seized under the warrant; and
27 (f) state that the person executing the warrant may seize any
28 other thing found in the course of executing the warrant if the
29 person believes on reasonable grounds that:

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

18 **71 Investigation warrants by telephone, fax etc.**

19 *Application for warrant*

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

1 warrant is sought. If it is necessary to do so, the authorised
2 applicant may apply for the warrant before the information is
3 sworn or affirmed.

4 *Issuing officer may complete and sign warrant*

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

19 *Obligations on authorised applicant*

- 20 (6) The authorised applicant must then do the following:
- 21 (a) complete a form of warrant in the same terms as the warrant
22 completed and signed by the issuing officer;
 - 23 (b) state on the form the following:
 - 24 (i) the name of the issuing officer;
 - 25 (ii) the day on which, and the time at which, the warrant
26 was signed;
 - 27 (c) send the following to the issuing officer:
 - 28 (i) the form of warrant completed by the authorised
29 applicant;
 - 30 (ii) the information referred to in subsection (3), which
31 must have been duly sworn or affirmed.
- 32 (7) The authorised applicant must comply with paragraph (6)(c) by the
33 end of the day after the earlier of the following:
-

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- 1 (a) the day on which the warrant ceases to be in force;
2 (b) the day on which the warrant is executed.

3 *Issuing officer to attach documents together*

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

6 **72 Authority of warrant**

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

18 **73 Offence relating to warrants by telephone, fax etc.**

19 An authorised applicant must not:

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

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

9 Penalty: Imprisonment for 2 years.

1 **Division 7—Extension of periods in which things secured**

2 **74 Extension of periods in which things secured**

3 *Application*

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

7 *Granting extension*

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

18 *Content of order*

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

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

2 **75 Powers of issuing officers**

3 *Powers conferred personally*

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

8 *Powers need not be accepted*

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

10 *Protection and immunity*

- 11 (3) An issuing officer exercising a power conferred by this Part has the
12 same protection and immunity as if the issuing officer were
13 exercising the power:
14 (a) as the court of which the issuing officer is a member; or
15 (b) as a member of the court of which the issuing officer is a
16 member.

1 **Division 9—Identity cards**

2 **76 Identity cards**

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

5 *Form of identity card*

- 6 (2) The identity card must:
7 (a) be in the form prescribed by the regulations; and
8 (b) contain a photograph that is no more than 1 year old of the
9 authorised person.

10 *Offence*

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

17 Penalty: 1 penalty unit.

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

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

20 *Exception—card lost or destroyed*

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

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

25 *Authorised person must carry card*

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

1 **Part 4—Civil penalty provisions**

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

3 **77 Simplified outline**

4 The following is a simplified outline of this Part:

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

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

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

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

15 **78 Purposes and operation of this Part**

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

20 **79 Enforceable civil penalty provisions**

- 21 (1) A provision is *enforceable* under this Part if:
- 22 (a) it is a civil penalty provision, as defined in subsection (2);
23 and
- 24 (b) an Act provides that the civil penalty provision is enforceable
25 under this Part.

Part 4 Civil penalty provisions

Division 1 Outline and operation of this Part

Section 80

- 1 (2) A provision of an Act or a legislative instrument is a ***civil penalty***
2 ***provision*** if:
3 (a) either:
4 (i) the provision sets out at its foot a pecuniary penalty, or
5 penalties, indicated by the words “Civil penalty”; or
6 (ii) another provision of an Act or a legislative instrument
7 provides that the provision is a civil penalty provision,
8 or that a person is liable to a civil penalty if the person
9 contravenes the provision; and
10 (b) the provision is:
11 (i) a subsection, or a section that is not divided into
12 subsections; or
13 (ii) a subregulation, or a regulation that is not divided into
14 subregulations; or
15 (iii) a subclause (however described) of a Schedule to an Act
16 or of a legislative instrument; or
17 (iv) a clause (however described) of a Schedule to an Act, or
18 of a legislative instrument, that is not divided into
19 subclauses.

20 **80 *Authorised applicant***

- 21 (1) A person is an ***authorised applicant*** for the purposes of exercising
22 powers under this Part in relation to the contravention of a civil
23 penalty provision if an Act provides that the person is an
24 authorised applicant in relation to the civil penalty provision for the
25 purposes of this Part.
- 26 (2) A person who is an ***authorised applicant*** for the purpose of
27 exercising powers mentioned in subsection (1) is also an
28 ***authorised applicant*** for the purposes of:
29 (a) exercising other powers under this Part; or
30 (b) performing functions or duties under this Part;
31 that are incidental to the powers mentioned in subsection (1).
- 32 (3) Without limiting subsection (1), an Act may provide that a person
33 is an authorised applicant in relation to a civil penalty provision for
34 the purposes of this Part by:

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- 1 (a) providing that a person of a specified class is an authorised
2 applicant in relation to the civil penalty provision for those
3 purposes; or
4 (b) authorising another person to specify that a person, or a
5 person of a specified class, is an authorised applicant in
6 relation to the civil penalty provision for those purposes.

7 **81 *Relevant court***

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

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

2 **82 Civil penalty orders**

3 *Application for order*

- 4 (1) An authorised applicant may apply to a relevant court for an order
5 that a person, who is alleged to have contravened a civil penalty
6 provision, pay the Commonwealth a pecuniary penalty.
- 7 (2) The authorised applicant must make the application within 4 years
8 of the alleged contravention.

9 *Court may order person to pay pecuniary penalty*

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

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

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

17 *Determining pecuniary penalty*

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

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

4 **83 Civil enforcement of penalty**

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

10 **84 Conduct contravening more than one civil penalty provision**

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

17 **85 Multiple contraventions**

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

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

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

28 **86 Proceedings may be heard together**

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

Section 87

1 **87 Civil evidence and procedure rules for civil penalty orders**

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

1 **Division 3—Civil proceedings and criminal proceedings**

2 **88 Civil proceedings after criminal proceedings**

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

8 **89 Criminal proceedings during civil proceedings**

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

20 **90 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.

Section 91

1 **91 Evidence given in civil proceedings not admissible in criminal**
2 **proceedings**

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

1 **Division 4—Miscellaneous**

2 **92 Ancillary contravention of civil penalty provisions**

3 (1) A person must not:

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

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

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

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

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

13 *Civil penalty*

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

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

20 **93 Continuing contraventions of civil penalty provisions**

21 (1) If an act or thing is required under a civil penalty provision to be
22 done:

23 (a) within a particular period; or

24 (b) before a particular time;

25 then the obligation to do that act or thing continues until the act or
26 thing is done (even if the period has expired or the time has
27 passed).

28 (2) A person who contravenes a civil penalty provision that requires an
29 act or thing to be done:

30 (a) within a particular period; or

31 (b) before a particular time;

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1 commits a separate contravention of that provision in respect of
2 each day during which the contravention occurs (including the day
3 the relevant civil penalty order is made or any later day).

4 **94 State of mind**

5 (1) In proceedings for a civil penalty order against a person for a
6 contravention of a civil penalty provision, it is not necessary to
7 prove:

- 8 (a) the person's intention; or
- 9 (b) the person's knowledge; or
- 10 (c) the person's recklessness; or
- 11 (d) the person's negligence; or
- 12 (e) any other state of mind of the person.

13 (2) Subsection (1) does not apply to the extent that the proceedings
14 relate to a contravention of subsection 92(1) (which is about
15 ancillary contravention of civil penalty provisions).

16 (3) Subsection (1) does not affect the operation of section 95 (which is
17 about mistake of fact).

18 (4) Subsection (1) does not apply to the extent that the civil penalty
19 provision, or a provision that relates to the civil penalty provision,
20 expressly provides otherwise.

21 **95 Mistake of fact**

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

- 24 (a) at or before the time of the conduct constituting the
25 contravention, the person:
 - 26 (i) considered whether or not facts existed; and
 - 27 (ii) was under a mistaken but reasonable belief about those
28 facts; and
- 29 (b) had those facts existed, the conduct would not have
30 constituted a contravention of the civil penalty provision.

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

13 **96 Exceptions etc. to civil penalty provisions—burden of proof**

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

19 **97 Civil penalty provisions contravened by employees, agents or**
20 **officers**

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

1 **Part 5—Infringement notices**

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

3 **98 Simplified outline**

4 The following is a simplified outline of this Part:

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

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

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

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

21 **99 Purpose and operation of this Part**

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

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

1 **100 Provisions *subject to infringement notices***

2 A provision that is an offence of strict liability or a civil penalty
3 provision in an Act or a legislative instrument is ***subject to an***
4 ***infringement notice*** under this Part if an Act provides that the
5 provision is subject to an infringement notice under this Part.

6 **101 *Infringement officer***

- 7 (1) A person is an ***infringement officer*** for the purposes of exercising
8 powers under this Part in relation to a contravention of a provision
9 if an Act provides that the person is an infringement officer in
10 relation to that provision for the purposes of this Part.
- 11 (2) A person who is an ***infringement officer*** for the purpose of
12 exercising powers mentioned in subsection (1) is also an
13 ***infringement officer*** for the purposes of:
14 (a) exercising other powers under this Part; or
15 (b) performing functions or duties under this Part;
16 that are incidental to the powers mentioned in subsection (1).
- 17 (3) Without limiting subsection (1), an Act may provide that a person
18 is an infringement officer in relation to a provision for the purposes
19 of this Part by:
20 (a) providing that a person of a specified class is an infringement
21 officer in relation to the provision for the purposes of this
22 Part; or
23 (b) authorising another person to specify that a person, or a
24 person of a specified class, is an infringement officer in
25 relation to the provision for the purposes of this Part.

26 **102 *Relevant chief executive***

- 27 (1) A person is the ***relevant chief executive*** for the purposes of
28 exercising powers under this Part in relation to a contravention of a
29 provision if an Act provides that the person is the relevant chief
30 executive in relation to that provision for the purposes of this Part.

Part 5 Infringement notices

Division 1 Outline and operation of this Part

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- 1 (2) A person who is the *relevant chief executive* for the purpose of
2 exercising powers mentioned in subsection (1) is also the *relevant*
3 *chief executive* for the purposes of:
4 (a) exercising other powers under this Part; or
5 (b) performing functions or duties under this Part;
6 that are incidental to the powers mentioned in subsection (1).
- 7 (3) Without limiting subsection (1), an Act may provide that a person
8 is the relevant chief executive in relation to a provision for the
9 purposes of this Part by:
10 (a) providing that a person who holds a specified office is the
11 relevant chief executive in relation to the provision for the
12 purposes of this Part; or
13 (b) authorising another person to specify that a person, or a
14 person who holds a specified office, is the relevant chief
15 executive in relation to the provision for the purposes of this
16 Part.

1 **Division 2—Infringement notices**

2 **103 When an infringement notice may be given**

- 3 (1) If an infringement officer believes on reasonable grounds that a
4 person has contravened a provision subject to an infringement
5 notice under this Part, the infringement officer may give to the
6 person an infringement notice for the alleged contravention.
- 7 (2) The infringement notice must be given within 12 months after the
8 day on which the contravention is alleged to have taken place.
- 9 (3) A single infringement notice must relate only to a single
10 contravention of a single provision unless subsection (4) applies.
- 11 (4) An infringement officer may give a person a single infringement
12 notice relating to multiple contraventions of a single provision if:
13 (a) the provision requires the person to do a thing within a
14 particular period or before a particular time; and
15 (b) the person fails or refuses to do that thing within that period
16 or before that time; and
17 (c) the failure or refusal occurs on more than 1 day; and
18 (d) each contravention is constituted by the failure or refusal on
19 one of those days.
- 20 Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.
21 For continuing contraventions of civil penalty provisions, see
22 section 93 of this Act.
- 23 (5) If a single provision can constitute both a civil penalty provision
24 and an offence provision, the infringement notice must relate to the
25 provision as an offence provision.

26 **104 Matters to be included in an infringement notice**

- 27 (1) An infringement notice must:
28 (a) be identified by a unique number; and
29 (b) state the day on which it is given; and
30 (c) state the name of the person to whom the notice is given; and

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- 1 (d) state the name and contact details of the person who gave the
2 notice, and that the person is an infringement officer for the
3 purposes of issuing the infringement notice; and
4 (e) give brief details of the alleged contravention, including:
5 (i) the provision that was allegedly contravened; and
6 (ii) the maximum penalty that a court could impose if the
7 provision were contravened; and
8 (iii) the time (if known) and day of, and the place of, the
9 alleged contravention; and
10 (f) state the amount that is payable under the notice; and
11 (g) give an explanation of how payment of the amount is to be
12 made; and
13 (h) state that, if the person to whom the notice is given pays the
14 amount within 28 days after the day the notice is given, then
15 (unless the notice is withdrawn):
16 (i) if the provision is an offence provision and does not also
17 constitute a civil penalty provision—the person will not
18 be liable to be prosecuted in a court for the alleged
19 contravention; or
20 (ii) if the provision is an offence provision that can also
21 constitute a civil penalty provision—the person is not
22 liable to be prosecuted in a court, and proceedings
23 seeking a civil penalty order will not be brought, in
24 relation to the alleged contravention; or
25 (iii) if the provision is a civil penalty provision—
26 proceedings seeking a civil penalty order will not be
27 brought in relation to the alleged contravention; and
28 (i) state that payment of the amount is not an admission of guilt
29 or liability; and
30 (j) state that the person may apply to the relevant chief executive
31 to have the period in which to pay the amount extended; and
32 (k) state that the person may choose not to pay the amount and, if
33 the person does so:
34 (i) if the provision is an offence provision and does not also
35 constitute a civil penalty provision—the person may be
36 prosecuted in a court for the alleged contravention; or

- 1 (ii) if the provision is an offence provision and can also
2 constitute a civil penalty provision—the person may be
3 prosecuted in a court, or proceedings seeking a civil
4 penalty order may be brought, in relation to the alleged
5 contravention; or
6 (iii) if the provision is a civil penalty provision—
7 proceedings seeking a civil penalty order may be
8 brought in relation to the alleged contravention; and
9 (l) set out how the notice can be withdrawn; and
10 (m) state that if the notice is withdrawn:
11 (i) if the provision is an offence provision and does not also
12 constitute a civil penalty provision—the person may be
13 prosecuted in a court for the alleged contravention; or
14 (ii) if the provision is an offence provision and can also
15 constitute a civil penalty provision—the person may be
16 prosecuted in a court, or proceedings seeking a civil
17 penalty order may be brought, in relation to the alleged
18 contravention; or
19 (iii) if the provision is a civil penalty provision—
20 proceedings seeking a civil penalty order may be
21 brought in relation to the alleged contravention; and
22 (n) state that the person may make written representations to the
23 relevant chief executive seeking the withdrawal of the notice.
24 (2) Unless another Act expressly provides otherwise, the amount to be
25 stated in the notice for the purposes of paragraph (1)(f) for the
26 alleged contravention of the provision by the person must be the
27 lesser of:
28 (a) one-fifth of the maximum penalty that a court could impose
29 on the person for that contravention; and
30 (b) 12 penalty units where the person is an individual, or 60
31 penalty units where the person is a body corporate.

32 **105 Extension of time to pay amount**

- 33 (1) A person to whom an infringement notice has been given may
34 apply to the relevant chief executive for an extension of the period
35 referred to in paragraph 104(1)(h).

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- 1 (2) If the application is made before the end of that period, the relevant
2 chief executive may, in writing, extend that period. The relevant
3 chief executive may do so before or after the end of that period.
- 4 (3) If the relevant chief executive extends that period, a reference in
5 this Part, or in a notice or other instrument under this Part, to the
6 period referred to in paragraph 104(1)(h) is taken to be a reference
7 to that period so extended.
- 8 (4) If the relevant chief executive does not extend that period, a
9 reference in this Part, or in a notice or other instrument under this
10 Part, to the period referred to in paragraph 104(1)(h) is taken to be
11 a reference to the period that ends on the later of the following
12 days:
13 (a) the day that is the last day of the period referred to in
14 paragraph 104(1)(h);
15 (b) the day that is 7 days after the day the person was given
16 notice of the relevant chief executive's decision not to
17 extend.
- 18 (5) The relevant chief executive may extend the period more than once
19 under subsection (2).

20 **106 Withdrawal of an infringement notice**

21 *Representations seeking withdrawal of notice*

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

25 *Withdrawal of notice*

- 26 (2) The relevant chief executive may withdraw an infringement notice
27 given to a person (whether or not the person has made written
28 representations seeking the withdrawal).
- 29 (3) When deciding whether or not to withdraw an infringement notice
30 (the **relevant infringement notice**), the relevant chief executive:

- 1 (a) must take into account any written representations seeking
2 the withdrawal that were given by the person to the relevant
3 chief executive; and
4 (b) may take into account the following:
5 (i) whether a court has previously imposed a penalty on the
6 person for a contravention of a provision subject to an
7 infringement notice under this Part that is included in
8 the same Act or legislative instrument as the provision
9 in relation to which the infringement notice is given;
10 (ii) the circumstances of the alleged contravention;
11 (iii) whether the person has paid an amount, stated in an
12 earlier infringement notice, for a contravention of a
13 provision subject to an infringement notice under this
14 Part if the contravention is constituted by conduct that is
15 the same, or substantially the same, as the conduct
16 alleged to constitute the contravention in the relevant
17 infringement notice;
18 (iv) any other matter the relevant chief executive considers
19 relevant.

20 *Notice of withdrawal*

- 21 (4) Notice of the withdrawal of the infringement notice must be given
22 to the person. The withdrawal notice must state:
23 (a) the person's name and address; and
24 (b) the day the infringement notice was given; and
25 (c) the identifying number of the infringement notice; and
26 (d) that the infringement notice is withdrawn; and
27 (e) that:
28 (i) if the provision is an offence provision and does not also
29 constitute a civil penalty provision—the person may be
30 prosecuted in a court for the alleged contravention; or
31 (ii) if the provision is an offence provision and can also
32 constitute a civil penalty provision—the person may be
33 prosecuted in a court, or proceedings seeking a civil
34 penalty order may be brought, in relation to the alleged
35 contravention; or

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- 1 (iii) if the provision is a civil penalty provision—
2 proceedings seeking a civil penalty order may be
3 brought in relation to the alleged contravention.

4 *Refund of amount if infringement notice withdrawn*

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

11 **107 Effect of payment of amount**

- 12 (1) If the person to whom an infringement notice for an alleged
13 contravention of a provision is given pays the amount stated in the
14 notice before the end of the period referred to in
15 paragraph 104(1)(h):
16 (a) any liability of the person for the alleged contravention is
17 discharged; and
18 (b) if the provision is an offence provision and does not also
19 constitute a civil penalty provision—the person may not be
20 prosecuted in a court for the alleged contravention; and
21 (c) if the provision is an offence provision and can also
22 constitute a civil penalty provision—the person may not be
23 prosecuted in a court, and proceedings seeking a civil penalty
24 order may not be brought, in relation to the alleged
25 contravention; and
26 (d) if the provision is a civil penalty provision—proceedings
27 seeking a civil penalty order may not be brought in relation to
28 the alleged contravention; and
29 (e) the person is not regarded as having admitted guilt or liability
30 for the alleged contravention; and
31 (f) if the provision is an offence provision—the person is not
32 regarded as having been convicted of the alleged offence.
33 (2) Subsection (1) does not apply if the notice has been withdrawn.

1 **108 Effect of this Part**

2 This Part does not:

- 3 (a) require an infringement notice to be given to a person for an
4 alleged contravention of a provision subject to an
5 infringement notice under this Part; or
6 (b) affect the liability of a person for an alleged contravention of
7 a provision subject to an infringement notice under this Part
8 if:
9 (i) the person does not comply with an infringement notice
10 given to the person for the contravention; or
11 (ii) an infringement notice is not given to the person for the
12 contravention; or
13 (iii) an infringement notice is given to the person for the
14 contravention and is subsequently withdrawn; or
15 (c) prevent the giving of 2 or more infringement notices to a
16 person for an alleged contravention of a provision subject to
17 an infringement notice under this Part; or
18 (d) limit a court's discretion to determine the amount of a
19 penalty to be imposed on a person who is found to have
20 contravened a provision subject to an infringement notice
21 under this Part.

1 **Part 6—Enforceable undertakings**

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

3 **109 Simplified outline**

4 The following is a simplified outline of this Part:

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

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

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

11 The undertaking may be enforced in a relevant court.

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

15 **110 Purpose and operation of this Part**

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

21 **111 Enforceable provisions**

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

1 **112 *Authorised person***

- 2 (1) A person is an ***authorised person*** for the purposes of exercising
3 powers under this Part in relation to a provision if an Act provides
4 that the person is an authorised person in relation to that provision
5 for the purposes of this Part.
- 6 (2) A person who is an ***authorised person*** for the purpose of
7 exercising powers mentioned in subsection (1) is also an
8 ***authorised person*** for the purposes of:
9 (a) exercising other powers under this Part; or
10 (b) performing functions or duties under this Part;
11 that are incidental to the powers mentioned in subsection (1).
- 12 (3) Without limiting subsection (1), an Act may provide that a person
13 is an authorised person in relation to a provision for the purposes of
14 this Part by:
15 (a) providing that a person of a specified class is an authorised
16 person in relation to the provision for the purposes of this
17 Part; or
18 (b) authorising another person to specify that a person, or a
19 person of a specified class, is an authorised person in relation
20 to the provision for the purposes of this Part.

21 **113 *Relevant court***

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

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

2 **114 Acceptance of undertakings**

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

23 **115 Enforcement of undertakings**

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

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

1 **Part 7—Injunctions**

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

3 **116 Simplified outline**

4 The following is a simplified outline of this Part:

<p>5 This Part creates a framework for using injunctions to enforce 6 provisions.</p> <p>7 For this Part to operate, a provision must be made enforceable 8 under this Part. This is to be done by another Act.</p> <p>9 Injunctions may be used to restrain a person from contravening a 10 provision enforceable under this Part, or to compel compliance 11 with such a provision.</p> <p>12 An interim injunction is available.</p>

13 **117 Purpose and operation of this Part**

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

18 **118 Enforceable provisions**

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

22 **119 Authorised person**

- 23 (1) A person is an *authorised person* for the purposes of applying
24 under this Part for an injunction in relation to a provision

- 1 enforceable under this Part, if an Act provides that the person is an
2 authorised person in relation to that provision for the purposes of
3 this Part.
- 4 (2) A person who is an **authorised person** for the purpose of
5 exercising powers mentioned in subsection (1) is also an
6 **authorised person** for the purposes of:
- 7 (a) exercising other powers under this Part; or
8 (b) performing functions or duties under this Part;
9 that are incidental to the powers mentioned in subsection (1).
- 10 (3) Without limiting subsection (1), an Act may provide that a person
11 is an authorised person in relation to a provision for the purposes of
12 this Part by:
- 13 (a) providing that a person of a specified class is an authorised
14 person in relation to the provision for the purposes of this
15 Part; or
16 (b) authorising another person to specify that a person, or a
17 person of a specified class, is an authorised person in relation
18 to the provision for the purposes of this Part.

19 **120 Relevant court**

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

1 **Division 2—Injunctions**

2 **121 Grant of injunctions**

3 *Restraining injunctions*

4 (1) If a person has engaged, is engaging or is proposing to engage, in
5 conduct in contravention of a provision enforceable under this Part,
6 a relevant court may, on application by an authorised person, grant
7 an injunction:

- 8 (a) restraining the person from engaging in the conduct; and
9 (b) if, in the court’s opinion, it is desirable to do so—requiring
10 the person to do a thing.

11 *Performance injunctions*

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

19 **122 Interim injunctions**

20 *Grant of interim injunctions*

21 (1) Before deciding an application for an injunction under section 121,
22 a relevant court may grant an interim injunction:

- 23 (a) restraining a person from engaging in conduct; or
24 (b) requiring a person to do a thing.

25 *No undertakings as to damages*

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

1 **123 Discharging or varying injunctions**

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

4 **124 Certain limits on granting injunctions not to apply**

5 *Restraining injunctions*

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

16 *Performance injunctions*

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

27 **125 Other powers of a relevant court unaffected**

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

1 **Part 8—General provisions**
2

3 **126 Regulations**

- 4 The Governor-General may make regulations prescribing matters:
5 (a) required or permitted to be prescribed by this Act; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Act.