

EXPOSURE DRAFT

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Tobacco Plain Packaging Bill 2011

No. , 2011

(Health and Ageing)

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

EXPOSURE DRAFT

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EXPOSURE DRAFT

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

3 The Parliament of Australia enacts:
4 **Chapter 1—Preliminary**

5 **Part 1—Preliminary**
6

7 ^{^1} **Short title**

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

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 1 Preliminary

Section ^2

1 **^2 Commencement**

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

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections ^1 and ^2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections ^3 to ^16	1 January 2012.	1 January 2012
3. Sections ^17 to ^19	1 July 2012.	1 July 2012
4. Sections ^20 to ^23	20 May 2012.	20 May 2012
5. Sections ^24 and ^25	1 July 2012.	1 July 2012
6. Sections ^26 and ^27	20 May 2012.	20 May 2012
7. Sections ^28 and ^29	1 July 2012.	1 July 2012
8. Sections ^30 to ^32	20 May 2012.	20 May 2012
9. Sections ^33 and ^34	1 July 2012.	1 July 2012
10. Sections ^35 to ^65	20 May 2012.	20 May 2012
11. Sections ^66 and ^67	1 January 2012.	1 January 2012
12. Sections ^68	20 May 2012.	20 May 2012

2 *Tobacco Plain Packaging Bill 2011* No. , 2011

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Preliminary Chapter 1
Preliminary Part 1

Section ^3

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
to ^90		
13. Sections ^91 to ^94	1 January 2012.	1 January 2012

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

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

^3 Objects of this Act

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

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Chapter 1 Preliminary

Part 1 Preliminary

Section ^4

1 **^4 Definitions**

2 (1) In this Act:

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

5 *Australia* includes all the external Territories.

6 *authorised officer* means a person appointed under section ^66 as
7 an authorised officer.

8 *civil penalty order* has the meaning given by section ^70.

9 *civil penalty provision* means a provision of this Act if:

10 (a) either:

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

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

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

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

19 *constitutional trade or commerce* means:

20 (a) trade or commerce between Australia and places outside
21 Australia; or

22 (b) trade or commerce among the States; or

23 (c) trade or commerce within a Territory, between a State and a
24 Territory or between 2 Territories.

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

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

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Preliminary Chapter 1
Preliminary Part 1

Section ^4

1 **Deputy President** of the Administrative Appeals Tribunal has the
2 meaning given by section 3 of the *Administrative Appeals Tribunal*
3 *Act 1975*.

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

7 **evidential material** means:

- 8 (a) in respect of an offence against this Act:
- 9 (i) any thing with respect to which the offence has been
10 committed or is suspected, on reasonable grounds, to
11 have been committed; or
- 12 (ii) any thing as to which there are reasonable grounds for
13 suspecting that it will afford evidence as to the
14 commission of the offence; or
- 15 (iii) any thing as to which there are reasonable grounds for
16 suspecting that it is intended to be used for the purpose
17 of committing the offence; and
- 18 (b) in respect of a contravention of a civil penalty provision:
- 19 (i) any thing with respect to which the civil penalty
20 provision has been contravened or is suspected, on
21 reasonable grounds, of having been contravened; or
- 22 (ii) any thing as to which there are reasonable grounds for
23 suspecting that it will afford evidence as to the
24 contravention of the civil penalty provision; or
- 25 (iii) any thing as to which there are reasonable grounds for
26 suspecting that it is intended to be used for the purpose
27 of contravening the civil penalty provision.

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

29 **import** means import into Australia.

30 **issuing officer** means:

- 31 (a) a Judge of a court created by the Parliament; or
32 (b) a Federal Magistrate; or
33 (c) a Deputy President of the Administrative Appeals Tribunal;
34 or

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 1 Preliminary

Section ^4

- 1 (d) a non-presidential member of the Administrative Appeals
2 Tribunal who:
3 (i) is enrolled as a legal practitioner of the High Court, or
4 the Supreme Court of a State or Territory; and
5 (ii) has been so enrolled for at least 5 years.
- 6 ***just terms*** has the same meaning as in paragraph 51(xxxi) of the
7 Constitution.
- 8 ***non-presidential member*** of the Administrative Appeals Tribunal
9 has the meaning given by section 3 of the *Administrative Appeals*
10 *Tribunal Act 1975*.
- 11 ***offer*** a tobacco product for sale has a meaning affected by
12 subsection (2) of this section.
- 13 ***packaging*** of tobacco products means:
14 (a) any container in which tobacco products are packaged for
15 retail sale; and
16 (b) any plastic or other wrapper that covers any container or
17 containers in which tobacco products are packaged for retail
18 sale; and
19 (c) any container for retail sale that contains smaller containers
20 in which tobacco products are packaged; and
21 (d) any thing (other than a tobacco product) placed inside the
22 packaging of tobacco products; and
23 (e) any thing attached to, or forming part of, the packaging of
24 tobacco products.
- 25 ***penalty unit***, in relation to a civil penalty provision, has the
26 meaning given by section 4AA of the *Crimes Act 1914*.
- 27 ***person assisting*** has the meaning given by section ^41.
- 28 ***relevant tobacco law*** has the meaning given by section ^7.
- 29 ***search powers*** has the meaning given by sections ^38, ^39 and
30 ^40.
- 31 ***Secretary*** means the Secretary of the Department.

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Preliminary Chapter 1
Preliminary Part 1

Section ^5

- 1 *this Act* includes the regulations.
- 2 *tobacco product* means processed tobacco, or any product that
3 contains tobacco, that:
- 4 (a) is manufactured to be used for smoking, sucking, chewing or
5 snuffing; and
- 6 (b) is not included in the Australian Register of Therapeutic
7 Goods maintained under the *Therapeutic Goods Act 1989*.
- 8 Note: Loose tobacco for roll-your-own cigarettes is an example of processed
9 tobacco. A cigar or cigarette is an example of a product that contains
10 tobacco.
- 11 *tobacco product requirement* means:
- 12 (a) a requirement prescribed by regulations made for the
13 purposes of section ^14; and
- 14 (b) if subsection ^11(2) applies (acquisition of property)—a
15 requirement prescribed by regulations made for the purposes
16 of that subsection.
- 17 *warrant* means:
- 18 (a) a warrant issued by an issuing officer under section ^60; or
19 (b) a warrant signed by an issuing officer under section ^61.
- 20 (2) In this Act, a reference to *offer* a tobacco product for sale includes
21 (without limitation) a reference to exposing, displaying or
22 advertising the product for sale.

^5 Act extends to external Territories

23 This Act extends to all the external Territories.

^6 Act binds the Crown

- 26 (1) This Act binds the Crown in right of the Commonwealth, of each
27 of the States, of the Australian Capital Territory, of the Northern
28 Territory and of Norfolk Island.
- 29 (2) This Act does not make the Crown liable to be:
30 (a) prosecuted for an offence; or

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Chapter 1 Preliminary

Part 1 Preliminary

Section ^7

- 1 (b) subject to civil proceedings for a civil penalty for a
2 contravention of a civil penalty provision; or
3 (c) given an infringement notice.

4 **^7 Operation of State and Territory laws**

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

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

10 (a) that conduct constitutes an offence against, or a contravention
11 of a civil penalty provision in, this Act; and

12 (b) that conduct also constitutes an offence against, or a
13 contravention of a civil penalty provision (however
14 described) in, the relevant tobacco law.

15 (3) In this Act:

16 *relevant tobacco law* means a law, or a provision of a law, that
17 regulates the packaging or appearance of tobacco products.

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2 **Part 2—Simplified outlines**

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4 **^8 Simplified outline for this Act**

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The following is a simplified outline of this Act:

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- This Act regulates the packaging and appearance of tobacco products in order to:
 - (a) improve public health; and
 - (b) give effect to certain obligations in the Convention on Tobacco Control.
- Requirements for plain packaging and the appearance of tobacco products may be prescribed in regulations made under section ^14 of this Act.
- The packaging and appearance of tobacco products must comply with the requirements of this Act.
- Offences and civil penalties apply if tobacco products are supplied, purchased, imported or manufactured and either the packaging, or the products themselves, do not comply with the requirements. (In the case of packaging, the offences and civil penalties apply only if the tobacco products are packaged for retail sale.)

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^9 Simplified outline for this Chapter

23

The following is a simplified outline of this Chapter:

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

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 2 Simplified outlines

Section ^9

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

EXPOSURE DRAFT

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2 **Part 3—Constitutional provisions**
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4 **^10 Additional operation of this Act**

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

7 *Corporations power*

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

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

13 *Trade and commerce power*

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

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

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

23 *Territories power*

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

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 3 Constitutional provisions

Section ^11

1 **^11 Acquisition of property**

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

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

12 Note: Offences and civil penalties apply to the supply, purchase, importation
13 and manufacture etc. of tobacco products that do not comply with the
14 prescribed requirements (see Chapter 3).

15 **^12 Implied freedom of political communication**

16 This Act does not apply to the extent (if any) that it would infringe
17 any constitutional doctrine of implied freedom of political
18 communication.

EXPOSURE DRAFT

Requirements for plain packaging and tobacco products **Chapter 2**
Simplified outline **Part 1**

Section ^13

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

4 **Part 1—Simplified outline**
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6 **^13 Simplified outline**

7 The following is a simplified outline of this Chapter:

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- To further the objects of this Act, regulations made under this Chapter may prescribe requirements for the packaging and appearance of tobacco products.
 - In particular, the regulations may prohibit (either entirely or subject to conditions) the use of trade marks, logos, brands or business or company names on packaging or on tobacco products. The regulations may also specify other requirements (such as colour requirements) for the appearance of packaging and tobacco products.
 - Offences and civil penalties apply in certain circumstances if tobacco products, or packaging, does not comply with the requirements.

EXPOSURE DRAFT

Chapter 2 Requirements for plain packaging and tobacco products

Part 2 Requirements for plain packaging and tobacco products

Section ^14

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Part 2—Requirements for plain packaging and tobacco products

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^14 Requirements for packaging and appearance of tobacco products

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

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(a) the packaging of tobacco products; and

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(b) the appearance of tobacco products.

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

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

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(2) Without limiting subsection (1), the requirements may:

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(a) prohibit the use of any trade mark, logo, brand, business or company name, or other identifying mark, on packaging or on tobacco products; or

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(b) specify conditions for using any trade mark, logo, brand, business or company name, or other identifying mark, on packaging or on tobacco products (including conditions that effectively constitute a prohibition on such use); or

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(c) prohibit the use of any design of packaging or any design of a tobacco product; or

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(d) specify conditions for using any design of packaging or any design of a tobacco product (including conditions that effectively constitute a prohibition on such use); or

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(e) otherwise relate to the appearance, size or shape of packaging or tobacco products; or

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(f) relate to the opening and contents of packaging; or

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(g) relate to the content of any information to be included on packaging; or

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(h) provide that information of a specified kind is not to be included on packaging; or

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Requirements for plain packaging and tobacco products **Chapter 2**
Requirements for plain packaging and tobacco products **Part 2**

Section ^15

- 1 (i) relate to the appearance of any words, signs or symbols on
2 packaging; or
3 (j) relate to the materials that may be used in or on packaging.

4 **^15 Effect on the *Trade Marks Act 1995* of non-use of trade mark as** 5 **a result of this Act**

- 6 (1) The Registrar of Trade Marks must not do any of the things in
7 subsection (2) merely because:
8 (a) the registered owner of the trade mark is prevented from
9 using the trade mark on the packaging of tobacco products, or
10 on tobacco products, under this Act; or
11 (b) as a result of being so prevented, a trade mark is not able to
12 be used to distinguish tobacco products.
- 13 (2) The Registrar of Trade Marks must not do any of the following for
14 the reasons referred to in subsection (1):
15 (a) reject an application for the registration of a trade mark under
16 the *Trade Marks Act 1995*;
17 (b) revoke the acceptance of an application for the registration of
18 a trade mark under that Act;
19 (c) refuse to register a trade mark under that Act;
20 (d) revoke the registration of a trade mark under that Act;
21 (e) remove a trade mark from the Register of Trade Marks under
22 that Act.
- 23 (3) A prescribed court (within the meaning of the *Trade Marks Act*
24 *1995*) may not make an order under Division 2 of Part 8 of that Act
25 requiring the Registrar of Trade Marks to do any of the things
26 referred to in subsection (2) for the reasons referred to in
27 subsection (1).

28 **^16 Effect on the *Designs Act 2003* of failure to make products as a** 29 **result of this Act**

- 30 A failure to make a product that embodies a registered design
31 merely in order to comply with the requirements of this Act does
32 not provide the basis for making an order:

EXPOSURE DRAFT

Chapter 2 Requirements for plain packaging and tobacco products

Part 2 Requirements for plain packaging and tobacco products

Section ^16

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

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Chapter 3—Offences and civil penalty provisions

Part 1—Simplified outline

^17 Simplified outline

The following is a simplified outline of this Chapter:

- A person must not:
 - (a) supply, purchase or import tobacco products in packaging for retail sale that does not comply with the requirements of this Act; nor
 - (b) be involved in the packaging of tobacco products for retail sale that does not comply with those requirements; nor
 - (c) supply, purchase, import or manufacture tobacco products that do not comply with those requirements; nor
 - (d) supply tobacco products that are not packaged for retail sale without certain contractual prohibitions.
- A person who does so:
 - (a) may commit a fault-based offence (that is, an offence where fault elements apply to the physical elements of the offence); and
 - (b) may also commit a strict liability offence (that is, an offence where no fault elements apply to the physical elements of the offence); and

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 1 Simplified outline

Section ^17

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(c) may also contravene a civil penalty provision.

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

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant packaging and tobacco
products **Part 2**
Non-compliant packaging of tobacco products **Division 1**

Section ^18

1

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

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

6 **^18 Selling or supplying tobacco products in non-compliant**
7 **packaging**

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

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

19 *Fault-based offence*

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

22 Penalty: 2,000 penalty units.

23 Note: See section ^35 in relation to the physical elements of the offence.

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

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

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

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

Division 1 Non-compliant packaging of tobacco products

Section ^19

1

Strict liability offence

2

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

3

4

Penalty: 60 penalty units.

5

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

6

7

Civil penalty provision

8

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

9

10

Civil penalty: 2,000 penalty units.

11

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

12

13

14

^19 Purchasing tobacco products in non-compliant packaging

15

- (1) A person contravenes this subsection if:

16

(a) the person purchases a tobacco product; and

17

(b) at the time the product is purchased, the product has been packaged for retail sale; and

18

19

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

20

21

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

22

23

Fault-based offence

24

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

25

26

Penalty: 2,000 penalty units.

27

Note 1: See section ^35 in relation to the physical elements of the offence.

28

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

29

EXPOSURE DRAFT

- 1 (4) For the purposes of subsection (3), strict liability applies to
2 paragraph (1)(b).
3 Note: For strict liability in relation to a physical element of an offence, see
4 subsection 6.1(2) of the *Criminal Code*.
- 5 *Strict liability offence*
- 6 (5) A person commits an offence of strict liability if the person
7 contravenes subsection (1).
8 Penalty: 60 penalty units.
9 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
10 *Code*.
11 Note 2: A defendant bears an evidential burden in relation to the matter in
12 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 13 *Civil penalty provision*
- 14 (6) A person is liable to a civil penalty if the person contravenes
15 subsection (1).
16 Civil penalty: 2,000 penalty units.
17 Note: It is generally not necessary to prove a person's state of mind in
18 proceedings for a contravention of a civil penalty provision (see
19 section ^83).
- 20 (7) A person who wishes to rely on subsection (2) in proceedings for a
21 civil penalty order bears an evidential burden in relation to that
22 matter.

23 ^20 Importing tobacco products in non-compliant packaging

- 24 (1) A person contravenes this subsection if:
25 (a) the person imports a tobacco product; and
26 (b) at the time the product is imported, the product has been
27 packaged for retail sale; and
28 (c) the packaging does not comply with a tobacco product
29 requirement.

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

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

Division 1 Non-compliant packaging of tobacco products

Section ^20

- 1 (2) Subsection (1) does not apply to an individual who imports the
2 tobacco product for his or her personal use.
- 3 *Fault-based offence*
- 4 (3) A person commits an offence if the person contravenes
5 subsection (1).
- 6 Penalty: 2,000 penalty units.
- 7 Note 1: See section ^35 in relation to the physical elements of the offence.
- 8 Note 2: A defendant bears an evidential burden in relation to the matter in
9 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 10 (4) For the purposes of subsection (3), strict liability applies to
11 paragraph (1)(b).
- 12 Note: For strict liability in relation to a physical element of an offence, see
13 subsection 6.1(2) of the *Criminal Code*.
- 14 *Strict liability offence*
- 15 (5) A person commits an offence of strict liability if the person
16 contravenes subsection (1).
- 17 Penalty: 60 penalty units.
- 18 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
19 *Code*.
- 20 Note 2: A defendant bears an evidential burden in relation to the matter in
21 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 22 *Civil penalty provision*
- 23 (6) A person is liable to a civil penalty if the person contravenes
24 subsection (1).
- 25 Civil penalty: 2,000 penalty units.
- 26 Note: It is generally not necessary to prove a person's state of mind in
27 proceedings for a contravention of a civil penalty provision (see
28 section ^83).

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant packaging and tobacco
products **Part 2**
Non-compliant packaging of tobacco products **Division 1**

Section ^21

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

4 **^21 Packaging of tobacco products in non-compliant packaging**

5 (1) A person contravenes this subsection if:
6 (a) the person:
7 (i) packages a tobacco product; or
8 (ii) manufactures the packaging for a tobacco product; and
9 (b) the product is packaged for retail sale; and
10 (c) the packaging does not comply with a tobacco product
11 requirement.

12 *Fault-based offence*

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

15 Penalty: 2,000 penalty units.

16 Note: See section ^35 in relation to the physical elements of the offence.

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

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

21 *Strict liability offence*

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

24 Penalty: 60 penalty units.

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

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

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

Division 1 Non-compliant packaging of tobacco products

Section ^22

1 *Civil penalty provision*

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

4 Civil penalty: 2,000 penalty units.

5 Note: It is generally not necessary to prove a person's state of mind in
6 proceedings for a contravention of a civil penalty provision (see
7 section ^83).

8 **^22 Manufacturing tobacco products that are packaged in** 9 **non-compliant packaging**

10 (1) A person contravenes this subsection if:

- 11 (a) the person (the *manufacturer*) manufactures a tobacco
12 product; and
13 (b) the manufacturer enters into a contract or arrangement, or
14 arrives at an understanding, for another person to package the
15 product for retail sale; and
16 (c) the packaging does not comply with a tobacco product
17 requirement.

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

21 *Fault-based offence*

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

24 Penalty: 2,000 penalty units.

25 Note 1: See section ^35 in relation to the physical elements of the offence.

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

28 *Strict liability offence*

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

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant packaging and tobacco
products **Part 2**
Non-compliant packaging of tobacco products **Division 1**

Section ^23

- 1 Penalty: 60 penalty units.
- 2 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
3 *Code*.
- 4 Note 2: A defendant bears an evidential burden in relation to the matter in
5 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 6 *Civil penalty provision*
- 7 (5) A person is liable to a civil penalty if the person contravenes
8 subsection (1).
- 9 Civil penalty: 2,000 penalty units.
- 10 Note: It is generally not necessary to prove a person's state of mind in
11 proceedings for a contravention of a civil penalty provision (see
12 section ^83).
- 13 (6) A person who wishes to rely on subsection (2) in proceedings for a
14 civil penalty order bears an evidential burden in relation to that
15 matter.

16 ^23 Certain supplies of unpackaged tobacco products

- 17 (1) A person contravenes this subsection if:
- 18 (a) the person:
- 19 (i) sells a tobacco product; or
- 20 (ii) offers a tobacco product for sale; or
- 21 (iii) otherwise supplies (whether or not for consideration) a
22 tobacco product;
- 23 to another person (the *purchaser*); and
- 24 (b) the product is not packaged for retail sale; and
- 25 (c) at the time of the supply, the person does not have a contract
26 with the purchaser that prohibits the purchaser from
27 supplying the product in Australia in packaging for retail sale
28 that does not comply with the tobacco product requirements.
- 29 Note: See subsection ^4(2) for an extended meaning of *offer*.
- 30 (2) To avoid doubt, the contract may allow the purchaser to supply the
31 tobacco product without having packaged the product for retail
32 sale.

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

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

Division 1 Non-compliant packaging of tobacco products

Section ^23

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Fault-based offence

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

Penalty: 2,000 penalty units.

Note: See section ^35 in relation to the physical elements of the offence.

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

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

Strict liability offence

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

Penalty: 60 penalty units.

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

Civil penalty provision

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

Civil penalty: 2,000 penalty units.

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant packaging and tobacco
products **Part 2**
Non-compliant tobacco products **Division 2**

Section ^24

1

2

Division 2—Non-compliant tobacco products

3

^24 Selling or supplying non-compliant tobacco products

4

(1) A person contravenes this subsection if:

5

(a) the person:

6

(i) sells a tobacco product; or

7

(ii) offers a tobacco product for sale; or

8

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

9

10

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

11

12

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

13

Fault-based offence

14

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

15

16

Penalty: 2,000 penalty units.

17

Note: See section ^35 in relation to the physical elements of the offence.

18

Strict liability offence

19

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

20

21

Penalty: 60 penalty units.

22

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

23

24

Civil penalty provision

25

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

26

27

Civil penalty: 2,000 penalty units.

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

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

Division 2 Non-compliant tobacco products

Section ^25

1 Note: It is generally not necessary to prove a person's state of mind in
2 proceedings for a contravention of a civil penalty provision (see
3 section ^83).

4 **^25 Purchasing non-compliant tobacco products**

- 5 (1) A person contravenes this subsection if:
6 (a) the person purchases a tobacco product; and
7 (b) the product does not comply with a tobacco product
8 requirement.
- 9 (2) Subsection (1) does not apply to an individual who purchases the
10 tobacco product for his or her personal use.

11 *Fault-based offence*

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

14 Penalty: 2,000 penalty units.

15 Note 1: See section ^35 in relation to the physical elements of the offence.

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

18 *Strict liability offence*

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

21 Penalty: 60 penalty units.

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

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

26 *Civil penalty provision*

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

29 Civil penalty: 2,000 penalty units.

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant packaging and tobacco
products **Part 2**
Non-compliant tobacco products **Division 2**

Section ^26

1 Note: It is generally not necessary to prove a person's state of mind in
2 proceedings for a contravention of a civil penalty provision (see
3 section ^83).

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

7 **^26 Importing non-compliant tobacco products**

8 (1) A person contravenes this subsection if:
9 (a) the person imports a tobacco product; and
10 (b) the product does not comply with a tobacco product
11 requirement.

12 (2) Subsection (1) does not apply to an individual who imports the
13 tobacco product for his or her personal use.

14 *Fault-based offence*

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

17 Penalty: 2,000 penalty units.

18 Note 1: See section ^35 in relation to the physical elements of the offence.

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

21 *Strict liability offence*

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

24 Penalty: 60 penalty units.

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

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

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

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

Division 2 Non-compliant tobacco products

Section ^27

1

Civil penalty provision

2

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

3

4

Civil penalty: 2,000 penalty units.

5

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

6

7

8

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

9

10

11

^27 Manufacturing non-compliant tobacco products

12

- (1) A person contravenes this subsection if:

13

(a) the person manufactures a tobacco product; and

14

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

15

16

Fault-based offence

17

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

18

19

Penalty: 2,000 penalty units.

20

Note: See section ^35 in relation to the physical elements of the offence.

21

Strict liability offence

22

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

23

24

Penalty: 60 penalty units.

25

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

26

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
General offences and civil penalty provisions for non-compliant packaging and tobacco
products **Part 2**
Non-compliant tobacco products **Division 2**

Section ^27

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Civil penalty provision

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

Civil penalty: 2,000 penalty units.

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant packaging of tobacco products

Section ^28

1

2

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

3

4

Division 1—Non-compliant packaging of tobacco products

5

^28 Selling or supplying tobacco products to a constitutional corporation in non-compliant packaging

6

7

(1) A person contravenes this subsection if:

8

(a) the person:

9

(i) sells a tobacco product; or

10

(ii) offers a tobacco product for sale; or

11

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

12

to another person; and

13

14

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

15

(c) at the time the product is sold, offered for sale, or otherwise supplied, the product has been packaged for retail sale; and

16

17

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

18

19

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

20

Fault-based offence

21

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

22

23

Penalty: 2,000 penalty units.

24

Note: See section ^35 in relation to the physical elements of the offence.

25

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

26

27

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

28

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
Offences and civil penalty provisions relating to constitutional corporations **Part 3**
Non-compliant packaging of tobacco products **Division 1**

Section ^29

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Strict liability offence

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

Penalty: 60 penalty units.

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

Civil penalty provision

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

Civil penalty: 2,000 penalty units.

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

^29 Purchasing tobacco products from a constitutional corporation in non-compliant packaging

- (1) A person contravenes this subsection if:
- (a) the person purchases a tobacco product from another person; and
 - (b) the other person is a constitutional corporation; and
 - (c) at the time the product is purchased, the product has been packaged for retail sale; and
 - (d) the packaging does not comply with a tobacco product requirement.
- (2) Subsection (1) does not apply to an individual who purchases the tobacco product for his or her personal use.

Fault-based offence

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

Penalty: 2,000 penalty units.

Note 1: See section ^35 in relation to the physical elements of the offence.

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant packaging of tobacco products

Section ^30

- 1 Note 2: A defendant bears an evidential burden in relation to the matter in
2 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 3 (4) For the purposes of subsection (3), strict liability applies to
4 paragraphs (1)(b) and (c).
- 5 Note: For strict liability in relation to a physical element of an offence, see
6 subsection 6.1(2) of the *Criminal Code*.
- 7 *Strict liability offence*
- 8 (5) A person commits an offence of strict liability if the person
9 contravenes subsection (1).
- 10 Penalty: 60 penalty units.
- 11 Note 1: For offences of strict liability, see subsection 6.1(1) of the *Criminal*
12 *Code*.
- 13 Note 2: A defendant bears an evidential burden in relation to the matter in
14 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 15 *Civil penalty provision*
- 16 (6) A person is liable to a civil penalty if the person contravenes
17 subsection (1).
- 18 Civil penalty: 2,000 penalty units.
- 19 Note: It is generally not necessary to prove a person's state of mind in
20 proceedings for a contravention of a civil penalty provision (see
21 section ^83).
- 22 (7) A person who wishes to rely on subsection (2) in proceedings for a
23 civil penalty order bears an evidential burden in relation to that
24 matter.

^30 Packaging of tobacco products in non-compliant packaging under a contract with a constitutional corporation

- 27 (1) A person contravenes this subsection if:
28 (a) the person:
29 (i) packages a tobacco product; or
30 (ii) manufactures the packaging for a tobacco product; and
31 (b) the product is packaged for retail sale; and

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
Offences and civil penalty provisions relating to constitutional corporations **Part 3**
Non-compliant packaging of tobacco products **Division 1**

Section ^31

- 1 (c) the product is packaged, or the package is manufactured,
2 under a contract with a constitutional corporation; and
3 (d) the packaging does not comply with a tobacco product
4 requirement.

5 *Fault-based offence*

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

8 Penalty: 2,000 penalty units.

9 Note: See section ^35 in relation to the physical elements of the offence.

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

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

14 *Strict liability offence*

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

17 Penalty: 60 penalty units.

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

20 *Civil penalty provision*

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

23 Civil penalty: 2,000 penalty units.

24 Note: It is generally not necessary to prove a person's state of mind in
25 proceedings for a contravention of a civil penalty provision (see
26 section ^83).

27 **^31 Packaging of tobacco products in non-compliant packaging that** 28 **contains identifying mark of a constitutional corporation**

- 29 (1) A person contravenes this subsection if:
-

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant packaging of tobacco products

Section ^31

- 1 (a) the person:
2 (i) packages a tobacco product; or
3 (ii) manufactures the packaging for a tobacco product; and
4 (b) the product is packaged for retail sale; and
5 (c) the trade mark, logo, brand, business or company name, or
6 other identifying mark, of a constitutional corporation
7 appears on the packaging; and
8 (d) the packaging does not comply with a tobacco product
9 requirement.

10 *Fault-based offence*

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

13 Penalty: 2,000 penalty units.

14 Note: See section ^35 in relation to the physical elements of the offence.

- 15 (3) For the purposes of subsection (2), strict liability applies to
16 paragraph (1)(b) and (c).

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

19 *Strict liability offence*

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

22 Penalty: 60 penalty units.

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

25 *Civil penalty provision*

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

28 Civil penalty: 2,000 penalty units.

29 Note: It is generally not necessary to prove a person's state of mind in
30 proceedings for a contravention of a civil penalty provision (see
31 section ^83).

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
Offences and civil penalty provisions relating to constitutional corporations **Part 3**
Non-compliant packaging of tobacco products **Division 1**

Section ^32

1 **^32 Certain supplies of unpackaged tobacco products by or to a**
2 **constitutional corporation**

3 (1) A person contravenes this subsection if:

4 (a) the person:

5 (i) sells a tobacco product; or

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

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

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

10 (b) either the person or the purchaser is a constitutional
11 corporation; and

12 (c) the product is not packaged for retail sale; and

13 (d) at the time of the supply, the person does not have a contract
14 with the purchaser that prohibits the purchaser from
15 supplying the product in Australia in packaging for retail sale
16 that does not comply with the tobacco product requirements.

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

18 (2) To avoid doubt, the contract may allow the purchaser to supply the
19 tobacco product without having packaged the product for retail
20 sale.

21 *Fault-based offence*

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

24 Penalty: 2,000 penalty units.

25 Note: See section ^35 in relation to the physical elements of the offence.

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

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

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 1 Non-compliant packaging of tobacco products

Section ^32

1

Strict liability offence

2

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

3

4

Penalty: 60 penalty units.

5

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

6

7

Civil penalty provision

8

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

9

10

Civil penalty: 2,000 penalty units.

11

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

12

13

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
Offences and civil penalty provisions relating to constitutional corporations **Part 3**
Non-compliant tobacco products **Division 2**

Section ^33

1

2

Division 2—Non-compliant tobacco products

3

^33 Selling or supplying non-compliant tobacco products to a constitutional corporation

4

5

(1) A person contravenes this subsection if:

6

(a) the person:

7

(i) sells a tobacco product; or

8

(ii) offers a tobacco product for sale; or

9

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

10

11

to another person; and

12

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

13

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

14

15

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

16

Fault-based offence

17

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

18

19

Penalty: 2,000 penalty units.

20

Note: See section ^35 in relation to the physical elements of the offence.

21

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

22

23

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

24

25

Strict liability offence

26

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

27

28

Penalty: 60 penalty units.

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 3 Offences and civil penalty provisions relating to constitutional corporations

Division 2 Non-compliant tobacco products

Section ^34

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

3 *Civil penalty provision*

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

6 Civil penalty: 2,000 penalty units.

7 Note: It is generally not necessary to prove a person's state of mind in
8 proceedings for a contravention of a civil penalty provision (see
9 section ^83).

10 **^34 Purchasing non-compliant tobacco products from a** 11 **constitutional corporation**

12 (1) A person contravenes this subsection if:

13 (a) the person purchases a tobacco product from another person;
14 and

15 (b) the other person is a constitutional corporation; and

16 (c) the product does not comply with a tobacco product
17 requirement.

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

20 *Fault-based offence*

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

23 Penalty: 2,000 penalty units.

24 Note 1: See section ^35 in relation to the physical elements of the offence.

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

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

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

EXPOSURE DRAFT

Offences and civil penalty provisions **Chapter 3**
Offences and civil penalty provisions relating to constitutional corporations **Part 3**
Non-compliant tobacco products **Division 2**

Section ^34

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Strict liability offence

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

Penalty: 60 penalty units.

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

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

Civil penalty provision

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

Civil penalty: 2,000 penalty units.

Note: It is generally not necessary to prove a person's state of mind in proceedings for a contravention of a civil penalty provision (see section ^83).

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

EXPOSURE DRAFT

Chapter 3 Offences and civil penalty provisions

Part 4 Physical elements of offences

Section ^35

1

2

Part 4—Physical elements of offences

3

4

^35 Physical elements of offences

5

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

6

7

8

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

9

EXPOSURE DRAFT

Powers to investigate contraventions of this Act **Chapter 4**
Simplified outline **Part 1**

Section ^36

1
2 **Chapter 4—Powers to investigate**
3 **contraventions of this Act**

4 **Part 1—Simplified outline**
5

6 **^36 Simplified outline**

7 The following is a simplified outline of this Chapter:

- 8
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23
- An authorised officer may enter premises under Part 2 of this Chapter if there are reasonable grounds for suspecting that there may be material on the premises related to the commission of an offence or the contravention of a civil penalty provision in this Act.
 - Entry must be with the consent of the occupier of the premises or under a warrant.
 - An authorised officer who enters premises may exercise search powers. The authorised officer may be assisted by other persons if that assistance is necessary and reasonable.
 - The occupier of the premises has certain rights and responsibilities.
 - An authorised officer can require information or documents to be produced under Part 3 of this Chapter.
 - Authorised officers are appointed by the Secretary under Part 4 of this Chapter.

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 1 Search powers

Section ^37

1

2 Part 2—Search warrants

3 Division 1—Search powers

4 ^37 Authorised officer may enter premises by consent or under a 5 warrant

6 (1) If an authorised officer has reasonable grounds for suspecting that
7 there may be evidential material on any premises, the authorised
8 officer may:

- 9 (a) enter the premises; and
10 (b) exercise the search powers (set out in sections ^38, ^39 and
11 ^40).

12 (2) However, an authorised officer is not authorised to enter the
13 premises unless:

- 14 (a) the occupier of the premises has consented to the entry and
15 the authorised officer has shown his or her identity card if
16 required by the occupier; or
17 (b) the entry is made under a warrant.

18 Note: If entry to the premises is with the occupier's consent, the authorised
19 officer must leave the premises if the consent ceases to have effect
20 (see section ^44).

21 ^38 Search powers of authorised officers

22 The following are the *search powers* that an authorised officer may
23 exercise in relation to premises under section ^37:

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

EXPOSURE DRAFT

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

Search warrants **Part 2**

Search powers **Division 1**

Section ^39

- 1 (ii) the power to seize evidential material of that kind if the
2 authorised officer finds it on the premises;
- 3 (c) the power to inspect, examine, take measurements of,
4 conduct tests on or take samples of evidential material
5 referred to in paragraph (a) or (b);
- 6 (d) the power to make any still or moving image or any
7 recording of the premises or evidential material referred to in
8 paragraph (a) or (b);
- 9 (e) the power to take onto the premises such equipment and
10 materials as the authorised officer requires for the purpose of
11 exercising powers in relation to the premises;
- 12 (f) the powers set out in subsections ^39(1) and (2) and section
13 ^40.

14 ^39 Powers relating to electronic equipment

- 15 (1) The *search powers* include the power to operate electronic
16 equipment on the premises if the authorised officer has reasonable
17 grounds for suspecting that:
- 18 (a) the equipment; or
19 (b) a disk, tape or other storage device that:
20 (i) is on the premises; and
21 (ii) can be used with the equipment or is associated with it;
22 contains evidential material referred to in paragraph ^38(a) or (b).
- 23 (2) The *search powers* include the following powers in relation to
24 evidential material described in subsection (1) found in the
25 exercise of the power under that subsection:
- 26 (a) if entry to the premises is under a warrant—the power to
27 seize the equipment and the disk, tape or other storage device
28 referred to in that subsection;
- 29 (b) the power to operate electronic equipment on the premises to
30 put the evidential material in documentary form and remove
31 the documents so produced from the premises;
- 32 (c) the power to operate electronic equipment on the premises to
33 transfer the evidential material to a disk, tape or other storage
34 device that:

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 1 Search powers

Section ^40

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

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

12 Note: For compensation for damage to electronic equipment, see section
13 ^51.

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

23 ^40 Seizing other evidential material

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

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

EXPOSURE DRAFT

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

Search warrants **Part 2**

Search powers **Division 1**

Section ^41

1 **^41 Persons assisting authorised officers**

2 *Authorised officers may be assisted by other persons*

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

7 *Powers of a person assisting the authorised officer*

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

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

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

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

22 **^42 Use of force in executing a warrant**

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

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

Section ^43

1

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

4 **^43 Authorised officer may ask questions and seek production of**
5 **documents**

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

7 (1) If an authorised officer is authorised to enter premises because the
8 occupier of the premises consented to the entry, the authorised
9 officer may ask the occupier to:

- 10 (a) answer any questions relating to the reasons for the
11 authorised officer entering the premises that are put by the
12 authorised officer; and
13 (b) produce any document relating to the reasons for the
14 authorised officer entering the premises that is requested by
15 the authorised officer.

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

17 (2) If an authorised officer is authorised to enter premises by a
18 warrant, the authorised officer may require any person on the
19 premises to:

- 20 (a) answer any questions relating to the reasons for the
21 authorised officer entering the premises that are put by the
22 authorised officer; and
23 (b) produce any document relating to the reasons for the
24 authorised officer entering the premises that is requested by
25 the authorised officer.

26 Note: For self-incrimination, see section ^68.

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

28 (3) A person commits an offence if:

- 29 (a) the person is subject to a requirement under subsection (2);
30 and
-

EXPOSURE DRAFT

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

Search warrants **Part 2**

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

Division 2

Section ⁴³

- 1 (b) the person fails to comply with the requirement.
- 2 Penalty for contravention of this subsection: 30 penalty units.

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 3 Obligations and incidental powers of authorised officers

Section ⁴⁴

1

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

4 **⁴⁴ Consent**

- 5 (1) Before obtaining the consent of an occupier of premises for the
6 purposes of paragraph ³⁷(2)(a), an authorised officer must inform
7 the occupier that the occupier may refuse consent.
- 8 (2) A consent has no effect unless the consent is voluntary.
- 9 (3) A consent may be expressed to be limited to entry during a
10 particular period. If so, the consent has effect for that period unless
11 the consent is withdrawn before the end of that period.
- 12 (4) A consent that is not limited as mentioned in subsection (3) has
13 effect until the consent is withdrawn.
- 14 (5) If an authorised officer has entered premises because of the consent
15 of the occupier of the premises, the authorised officer, and any
16 person assisting the authorised officer, must leave the premises if
17 the consent ceases to have effect.

18 **⁴⁵ Announcement before entry under warrant**

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

EXPOSURE DRAFT

Powers to investigate contraventions of this Act **Chapter 4**
Search warrants **Part 2**
Obligations and incidental powers of authorised officers **Division 3**

Section ^46

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

12 **^46 Authorised officer to be in possession of warrant**

- 13 An authorised officer who is executing a warrant must be in
14 possession of:
15 (a) the warrant issued by the issuing officer under section ^60
16 (ordinary warrants), or a copy of the warrant as so issued; or
17 (b) the form of warrant completed under subsection ^61(6)
18 (telephone warrants), or a copy of the form as so completed.

19 **^47 Details of warrant etc. to be given to occupier**

- 20 (1) An authorised officer must comply with subsection (2) if:
21 (a) a warrant is being executed in relation to premises; and
22 (b) the occupier of the premises, or another person who
23 apparently represents the occupier, is present at the premises.
- 24 (2) The authorised officer must, as soon as practicable:
25 (a) do one of the following:
26 (i) if the warrant was issued under section ^60 (ordinary
27 warrants)—make a copy of the warrant available to the
28 occupier or other person (which need not include the
29 signature of the issuing officer who issued it);
30 (ii) if the warrant was signed under section ^61 (telephone
31 warrants)—make a copy of the form of warrant
32 completed under subsection ^61(6) available to the
33 occupier or other person; and

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 3 Obligations and incidental powers of authorised officers

Section ^48

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

4 **^48 Completing execution of warrant after temporary cessation**

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

19 *Application for extension in emergency situation*

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

EXPOSURE DRAFT

Powers to investigate contraventions of this Act **Chapter 4**
Search warrants **Part 2**
Obligations and incidental powers of authorised officers **Division 3**

Section ^49

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Extension in emergency situation

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

^49 Completing execution of warrant stopped by court order

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

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

^50 Expert assistance to operate electronic equipment

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

Securing equipment

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 3 Obligations and incidental powers of authorised officers

Section ^51

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

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

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

9 *Period equipment may be secured*

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

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

14 Note: For compensation for damage to electronic equipment, see section
15 ^51.

16 *Extensions*

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

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

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

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

30 **^51 Compensation for damage to electronic equipment**

31 (1) This section applies if:

EXPOSURE DRAFT

Powers to investigate contraventions of this Act **Chapter 4**
Search warrants **Part 2**
Obligations and incidental powers of authorised officers **Division 3**

Section ^51

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 4 Occupier's rights and responsibilities

Section ^52

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Division 4—Occupier's rights and responsibilities

3

^52 Occupier entitled to observe execution of warrant

4

(1) The occupier, or another person who apparently represents the occupier, is entitled to observe the execution of a warrant if the occupier or other person is present at the premises while the warrant is being executed.

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(2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.

9

10

(3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

11

12

^53 Occupier to provide authorised officer with facilities and assistance

13

14

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

15

16

(a) an authorised officer executing the warrant; and

17

(b) any person assisting the authorised officer;

18

with all reasonable facilities and assistance for the effective exercise of their powers, and the effective performance of their functions and duties.

19

20

21

Offence

22

(2) A person commits an offence if:

23

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

24

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

25

Penalty for contravention of this subsection: 30 penalty units.

EXPOSURE DRAFT

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

Search warrants **Part 2**

General provisions relating to seizure **Division 5**

Section ^54

1

2

Division 5—General provisions relating to seizure

3

^54 Copies of seized things to be provided

4

(1) This section applies if:

5

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

6

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

7

8

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

9

10

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

11

12

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

13

14

15

16

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

17

18

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

19

20

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22

^55 Receipts for seized things

23

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

24

25

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

26

^56 Return of seized things

27

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

28

29

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 5 General provisions relating to seizure

Section ^57

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

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

4 *Exceptions*

5 (2) Subsection (1):

- 6 (a) is subject to any contrary order of a court; and
7 (b) does not apply if the thing:
8 (i) is forfeited or forfeitable to the Commonwealth; or
9 (ii) is the subject of a dispute as to ownership.

10 (3) The Secretary is not required to take reasonable steps to return a
11 thing because of paragraph (1)(c) if:

- 12 (a) proceedings in respect of which the thing may afford
13 evidence were instituted before the end of the 60 days and
14 have not been completed (including an appeal to a court in
15 relation to those proceedings); or
16 (b) the thing may continue to be retained because of an order
17 under section ^57; or
18 (c) the Commonwealth, the Secretary or an authorised officer is
19 otherwise authorised (by a law, or an order of a court, of the
20 Commonwealth or of a State or Territory) to retain, destroy,
21 dispose of or otherwise deal with the thing.

22 *Return of thing*

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

26 **^57 Issuing officer may permit a thing to be retained**

27 *Application to retain thing*

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

EXPOSURE DRAFT

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

Search warrants **Part 2**

General provisions relating to seizure **Division 5**

Section [^]58

- 1 (a) 60 days after the seizure; or
2 (b) a period previously specified in an order of an issuing officer
3 under this section.
- 4 (2) Before making the application, the Secretary must:
5 (a) take reasonable steps to discover who has an interest in the
6 retention of the thing; and
7 (b) if it is practicable to do so, notify each person whom the
8 authorised officer believes to have such an interest of the
9 proposed application.
- 10 *Order to retain thing*
- 11 (3) The issuing officer may order that the thing may continue to be
12 retained for a period specified in the order if the issuing officer is
13 satisfied that it is necessary for the thing to continue to be retained:
14 (a) for the purposes of investigating whether:
15 (i) an offence has been committed against this Act, or the
16 *Crimes Act 1914* or the *Criminal Code* to the extent that
17 it relates to this Act; or
18 (ii) a civil penalty provision in this Act has been
19 contravened; or
20 (b) to enable evidence of such an offence or contravention to be
21 secured for the purposes of a prosecution or action.
- 22 (4) The period specified must not exceed 3 years.

[^]58 Disposal of things

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

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 5 General provisions relating to seizure

Section ^59

- 1 **^59 Compensation for acquisition of property**
- 2 (1) If the operation of section ^58 would result in an acquisition of
- 3 property from a person otherwise than on just terms, the
- 4 Commonwealth is liable to pay a reasonable amount of
- 5 compensation to the person.
- 6 (2) If the Commonwealth and the person do not agree on the amount
- 7 of the compensation, the person may institute proceedings in a
- 8 court of competent jurisdiction for the recovery from the
- 9 Commonwealth of such reasonable amount of compensation as the
- 10 court determines.

EXPOSURE DRAFT

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

Search warrants **Part 2**

Issue of warrants **Division 6**

Section ^{^60}

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2 **Division 6—Issue of warrants**

3 ^{^60} **Issue of warrants**

4 *Application for warrant*

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

7 *Issue of warrant*

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

17 *Content of warrant*

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 6 Issue of warrants

Section ^61

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

7 **^61 Warrants by telephone, fax etc.**

8 *Application for warrant*

- 9 (1) An authorised officer may apply to an issuing officer by telephone,
10 fax or other electronic means for a warrant under section ^60 in
11 relation to premises:
12 (a) in an urgent case; or
13 (b) if the delay that would occur if an application were made in
14 person would frustrate the effective execution of the warrant.
- 15 (2) The issuing officer may require communication by voice to the
16 extent that it is practicable in the circumstances.
- 17 (3) Before applying for the warrant, the authorised officer must
18 prepare an information of the kind mentioned in subsection ^60(2)
19 in relation to the premises that sets out the grounds on which the
20 warrant is sought. If it is necessary to do so, the authorised officer
21 may apply for the warrant before the information is sworn or
22 affirmed.

23 *Issuing officer may complete and sign warrant*

- 24 (4) The issuing officer may complete and sign the same warrant that
25 would have been issued under section ^60 if the issuing officer is
26 satisfied that there are reasonable grounds for doing so:
27 (a) after considering the terms of the information; and
28 (b) after receiving such further information (if any) as the issuing
29 officer requires concerning the grounds on which the issue of
30 the warrant is being sought.

EXPOSURE DRAFT

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

Search warrants **Part 2**

Issue of warrants **Division 6**

Section ^62

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

7 *Obligations on authorised officer*

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

23 *Issuing officer to attach documents together*

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

26 **^62 Authority of warrant**

- 27 (1) A form of warrant duly completed under subsection ^61(6) is
28 authority for the same powers as are authorised by the warrant
29 signed by the issuing officer under subsection ^61(4).

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 6 Issue of warrants

Section ^63

- 1 (2) In any proceedings, a court is to assume (unless the contrary is
2 proved) that an exercise of power was not authorised by a warrant
3 under section ^61 if:
- 4 (a) it is material, in those proceedings, for the court to be
5 satisfied that the exercise of power was authorised by that
6 section; and
- 7 (b) the warrant signed by the issuing officer authorising the
8 exercise of the power is not produced in evidence.

9 **^63 Offence relating to warrants by telephone, fax etc.**

10 An authorised officer must not:

- 11 (a) state in a document that purports to be a form of warrant
12 under section ^61 the name of an issuing officer unless that
13 issuing officer signed the warrant; or
- 14 (b) state on a form of warrant under that section a matter that, to
15 the authorised officer's knowledge, departs in a material
16 particular from the terms of the warrant signed by the issuing
17 officer under that section; or
- 18 (c) purport to execute, or present to another person, a document
19 that purports to be a form of warrant under that section that
20 the authorised officer knows departs in a material particular
21 from the terms of a warrant signed by an issuing officer
22 under that section; or
- 23 (d) give to an issuing officer a form of warrant under that section
24 that is not the form of warrant that the authorised officer
25 purported to execute.

26 Penalty: Imprisonment for 2 years.

EXPOSURE DRAFT

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

Search warrants **Part 2**

Powers of issuing officers **Division 7**

Section ^64

1

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

3 **^64 Powers of issuing officers**

4 *Consent to conferral of powers*

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

7 *Nomination by Attorney-General*

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

11 *Powers conferred personally*

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

17 *Protection and immunity—Judges and Federal Magistrates*

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

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

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

Part 2 Search warrants

Division 7 Powers of issuing officers

Section ⁶⁴

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

EXPOSURE DRAFT

Powers to investigate contraventions of this Act **Chapter 4**
Power to require persons to give information, produce documents or answer questions
Part 3

Section ^65

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

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^65 Power to require persons to give information, produce documents or answer questions

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

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

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

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

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

19

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Note: For self-incrimination, see section ^68.

21

(3) The notice must:

22

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

23

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

24

25

26

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

27

28

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

29

30

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

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EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act

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

Section ^65

- 1 *Oath or affirmation*
- 2 (4) An authorised officer may require answers provided under
- 3 paragraph (2)(c) to be verified by, or given on, oath or affirmation
- 4 and either orally or in writing.
- 5 (5) An authorised officer to whom information or answers are verified
- 6 or given may administer the oath or affirmation.
- 7 *Offence*
- 8 (6) A person commits an offence if:
- 9 (a) the person is given a notice under subsection (2); and
- 10 (b) the person fails to comply with the notice.
- 11 Penalty for contravention of this subsection: 30 penalty units.

EXPOSURE DRAFT

Powers to investigate contraventions of this Act **Chapter 4**
Miscellaneous **Part 4**

Section ^66

1

2 **Part 4—Miscellaneous**
3

4 **^66 Appointment of authorised officers**

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

- 7 (a) a person who is appointed or engaged under the *Public*
8 *Service Act 1999*;
9 (b) a member or special member of the Australian Federal
10 Police.

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

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

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

18 **^67 Identity cards**

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

20 *Form of identity card*

21 (2) The identity card must:

- 22 (a) be in the form approved by the Secretary; and
23 (b) contain a recent photograph of the authorised officer.

24 *Authorised officer must carry card*

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

EXPOSURE DRAFT

Chapter 4 Powers to investigate contraventions of this Act
Part 4 Miscellaneous

Section ^68

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Offence

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

Penalty: 1 penalty unit.

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

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

Defence—card lost or destroyed

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

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

^68 Self-incrimination

- (1) A person is not excused from giving information, producing a document or answering a question under subsection ^43(2) or ^65(2) on the ground that the information, the production of the document, or answer to the question, might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual none of the following is admissible in evidence against the individual in criminal proceedings:
- (a) the information given, the document produced or the answer given;
 - (b) giving the information, producing the document or answering the question;
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or answering the question.

EXPOSURE DRAFT

Enforcing compliance with this Act **Chapter 5**
Simplified outline **Part 1**

Section ^69

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Chapter 5—Enforcing compliance with this Act

Part 1—Simplified outline

^69 Simplified outline

The following is a simplified outline of this Chapter:

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

EXPOSURE DRAFT

Chapter 5 Enforcing compliance with this Act

Part 2 Civil penalty provisions

Division 1 Obtaining a civil penalty order

Section ^70

1

2 **Part 2—Civil penalty provisions**

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

4 **^70 Civil penalty orders**

5 *Application for order*

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

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

11 *Court may order person to pay pecuniary penalty*

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

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

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

19 *Determining pecuniary penalty*

20 (5) The pecuniary penalty must not be more than:
21 (a) if the person is a body corporate—5 times the pecuniary
22 penalty specified for the civil penalty provision; and
23 (b) otherwise—the pecuniary penalty specified for the civil
24 penalty provision.

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

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

EXPOSURE DRAFT

Enforcing compliance with this Act **Chapter 5**

Civil penalty provisions **Part 2**

Obtaining a civil penalty order **Division 1**

Section ^71

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

10 **^71 Civil enforcement of penalty**

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

16 **^72 Conduct contravening more than one civil penalty provision**

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

23 **^73 Multiple contraventions**

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

EXPOSURE DRAFT

Chapter 5 Enforcing compliance with this Act

Part 2 Civil penalty provisions

Division 1 Obtaining a civil penalty order

Section ^74

1 **^74 Proceedings may be heard together**

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

4 **^75 Civil evidence and procedure rules for civil penalty orders**

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

8 **^76 Contravening a civil penalty provision is not an offence**

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

EXPOSURE DRAFT

Enforcing compliance with this Act **Chapter 5**
Civil penalty provisions **Part 2**
Civil proceedings and criminal proceedings **Division 2**

Section ^77

1

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

3 **^77 Civil proceedings after criminal proceedings**

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

9 **^78 Criminal proceedings during civil proceedings**

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

20 **^79 Criminal proceedings after civil proceedings**

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

26 **^80 Evidence given in civil proceedings not admissible in criminal 27 proceedings**

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

Chapter 5 Enforcing compliance with this Act

Part 2 Civil penalty provisions

Division 2 Civil proceedings and criminal proceedings

Section ^80

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

EXPOSURE DRAFT

Enforcing compliance with this Act **Chapter 5**

Civil penalty provisions **Part 2**

Miscellaneous **Division 3**

Section ^81

1

2 **Division 3—Miscellaneous**

3 **^81 Ancillary contravention of civil penalty provisions**

- 4 (1) A person must not:
- 5 (a) attempt to contravene a civil penalty provision; or
 - 6 (b) aid, abet, counsel or procure a contravention of a civil
7 penalty provision; or
 - 8 (c) induce (by threats, promises or otherwise) a contravention of
9 a civil penalty provision; or
 - 10 (d) be in any way, directly or indirectly, knowingly concerned in,
11 or party to, a contravention of a civil penalty provision; or
 - 12 (e) conspire with others to effect a contravention of a civil
13 penalty provision.

14 Note: Section ^83 (which provides that a person's state of mind does not
15 need to be proven in relation to a civil penalty provision) does not
16 apply to this subsection.

17 *Civil penalty*

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

20 **^82 Mistake of fact**

- 21 (1) A person is not liable to have a civil penalty order made against the
22 person for a contravention of a civil penalty provision if:
- 23 (a) at or before the time of the conduct constituting the
24 contravention, the person:
 - 25 (i) considered whether or not facts existed; and
 - 26 (ii) was under a mistaken but reasonable belief about those
27 facts; and
 - 28 (b) had those facts existed, the conduct would not have
29 constituted a contravention of the civil penalty provision.
- 30 (2) For the purposes of subsection (1), a person may be regarded as
31 having considered whether or not facts existed if:
-

EXPOSURE DRAFT

Chapter 5 Enforcing compliance with this Act

Part 2 Civil penalty provisions

Division 3 Miscellaneous

Section ^83

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

11 ^83 State of mind

- 12 (1) In proceedings for a civil penalty order against a person for a
13 contravention of a civil penalty provision (other than subsection
14 ^81(1)), it is not necessary to prove:
15 (a) the person's intention; or
16 (b) the person's knowledge; or
17 (c) the person's recklessness; or
18 (d) the person's negligence; or
19 (e) any other state of mind of the person.
- 20 (2) Subsection (1) of this section does not affect the operation of
21 section ^82 (mistake of fact).

22 ^84 Civil penalty provisions contravened by employees, agents or 23 officers

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

EXPOSURE DRAFT

Enforcing compliance with this Act **Chapter 5**
Infringement notices **Part 3**

Section ^85

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2 **Part 3—Infringement notices**

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4 **^85 When an infringement notice may be given**

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

13 **^86 Matters to be included in an infringement notice**

14 An infringement notice must:

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

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Chapter 5 Enforcing compliance with this Act
Part 3 Infringement notices

Section ^87

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

21 **^87 Extension of time to pay amount**

- 22 (1) A person to whom an infringement notice has been given may
23 apply to the Secretary for an extension of the period referred to in
24 paragraph ^86(h).
- 25 (2) If the application is made before the end of that period, the
26 Secretary may, in writing, extend that period. The Secretary may
27 do so before or after the end of that period.
- 28 (3) If the Secretary extends that period, a reference in this Part, or in a
29 notice or other instrument under this Part, to the period referred to
30 in paragraph ^86(h) is taken to be a reference to that period so
31 extended.
- 32 (4) If the Secretary does not extend that period, a reference in this Part,
33 or in a notice or other instrument under this Part, to the period

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1 referred to in paragraph ^86(h) is taken to be a reference to the
2 period that ends on the later of the following days:

- 3 (a) the day that is the last day of the period referred to in
4 paragraph ^86(h);
- 5 (b) the day that is 7 days after the day the person was given
6 notice of the Secretary's decision not to extend.

- 7 (5) The Secretary may extend the period more than once under
8 subsection (2).

9 **^88 Withdrawal of an infringement notice**

10 *Representations seeking withdrawal of notice*

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

14 *Withdrawal of notice*

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

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

2 *Notice of withdrawal*

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

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

12 *Refund of amount if infringement notice withdrawn*

13 (5) If:

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

18 **^89 Effect of payment of amount**

19 (1) If the person to whom an infringement notice for an alleged
20 contravention of a provision is given pays the amount stated in the
21 notice before the end of the period referred to in paragraph ^86(h):

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

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

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Enforcing compliance with this Act **Chapter 5**
Infringement notices **Part 3**

Section ^90

1 **^90 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 an offence; or
- 5 (b) affect the liability of a person for an alleged contravention of
6 an offence if:
- 7 (i) the person does not comply with an infringement notice
8 given to the person for the contravention; or
- 9 (ii) an infringement notice is not given to the person for the
10 contravention; or
- 11 (iii) an infringement notice is given to the person for the
12 contravention and is subsequently withdrawn; or
- 13 (c) prevent the giving of 2 or more infringement notices to a
14 person for an alleged contravention of an offence; or
- 15 (d) limit a court's discretion to determine the amount of a
16 penalty to be imposed on a person who is found to have
17 contravened an offence.

EXPOSURE DRAFT

Chapter 6 Miscellaneous provisions

Part 1 Simplified outline

Section ^91

1

2

Chapter 6—Miscellaneous provisions

3

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Part 1—Simplified outline

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^91 Simplified outline

6

The following is a simplified outline of this Chapter:

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- Part 2 of this Chapter contains other miscellaneous provisions (such as the Secretary's delegation power and reporting to Parliament).

EXPOSURE DRAFT

Miscellaneous provisions **Chapter 6**
Miscellaneous provisions **Part 2**

Section ^92

1

2 **Part 2—Miscellaneous provisions**
3

4 **^92 Delegation**

- 5 (1) The Secretary may, in writing, delegate to an SES employee, or
6 acting SES employee, in the Department all or any of the
7 Secretary's powers or functions under this Act.
- 8 (2) In exercising powers or functions delegated under subsection (1),
9 the delegate must comply with any directions of the Secretary.

10 **^93 Reports to Parliament**

- 11 (1) As soon as practicable after the end of each financial year, the
12 Minister must cause to be prepared a report on:
13 (a) the number and nature of any contraventions of this Act
14 occurring in the financial year; and
15 (b) action taken in response to each contravention.
- 16 (2) A person who prepares a report under subsection (1) must give a
17 copy to the Minister.
- 18 (3) The Minister must cause the report to be included in the annual
19 report of the Department for that financial year.

20 **^94 Regulations**

- 21 (1) The Governor-General may make regulations prescribing matters:
22 (a) required or permitted by this Act to be prescribed; or
23 (b) necessary or convenient to be prescribed for carrying out or
24 giving effect to this Act.
- 25 (2) Without limiting subsection (1), the regulations may, for the
26 purposes of section 46 of the *Trans-Tasman Mutual Recognition*
27 *Act 1997*, declare that this Act is exempt from the operation of that
28 Act.

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Part 2 Miscellaneous provisions

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