



Regulatory Powers (Standardisation Reform) Act 2017

No. 124, 2017

An Act to apply the *Regulatory Powers (Standard Provisions) Act 2014* to various Commonwealth Acts, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Regulatory Powers (Standardisation Reform) Act 2017

No. 124, 2017

An Act to apply the *Regulatory Powers (Standard Provisions) Act 2014* to various Commonwealth Acts, and for related purposes

[Assented to 6 November 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Regulatory Powers (Standardisation Reform) Act 2017*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 November 2017
2. Schedule 1	The day after this Act receives the Royal Assent.	7 November 2017
3. Schedules 2 to 15	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Regulatory Powers (Standard Provisions) Act 2014

Part 1—Amendments

Regulatory Powers (Standard Provisions) Act 2014

1 Section 22 (heading)

Repeal the heading, substitute:

22 Securing evidence of a contravention

2 Paragraph 22(1)(b)

Repeal the paragraph, substitute:

- (b) an authorised person believes on reasonable grounds that:
 - (i) a provision that is subject to monitoring under this Part, or a related provision, has been contravened with respect to the thing; or
 - (ii) the thing affords evidence of the contravention of a provision that is subject to monitoring under this Part, or a related provision; or
 - (iii) the thing is intended to be used for the purpose of contravening a provision that is subject to monitoring under this Part, or a related provision; or
 - (iv) the thing affords evidence that information subject to monitoring under this Part is not correct; and

3 Subsection 22(1)

Omit “The equipment may be secured by locking it up”, substitute “The thing may be secured by locking it up”.

4 Paragraph 35(2)(b)

Omit “1 year”, substitute “5 years”.

5 Paragraph 76(2)(b)

Omit “1 year”, substitute “5 years”.

6 Subsection 82(2)

Omit “4 years”, substitute “6 years”.

7 Paragraph 104(1)(e)

Repeal the paragraph, substitute:

- (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
 - (iii) the time (if known) and day of, and the place of, each alleged contravention; and

8 Subsection 104(2)

Repeal the subsection, substitute:

- (2) If the notice relates to only one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
 - (a) one-fifth of the maximum penalty that a court could impose on the person for that contravention; and
 - (b) 12 penalty units where the person is an individual, or 60 penalty units where the person is a body corporate.
- (3) If the notice relates to more than one alleged contravention of the provision by the person, the amount to be stated in the notice for the purposes of paragraph (1)(f) is the lesser of:
 - (a) one-fifth of the amount worked out by adding together the maximum penalty that a court could impose on the person for each alleged contravention; and
 - (b) either:
 - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; or
 - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 60.

Note: Under section 103, a single infringement notice may only deal with multiple contraventions if they are contraventions of a single provision continuing over a period.

(4) Subsections (2) and (3) do not apply if another Act expressly provides otherwise.

Part 2—Application of amendments

9 Amendments relating to monitoring powers

The amendments made by items 2 and 3 of this Schedule apply where premises are entered under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* on or after the commencement of those items.

10 Amendments relating to identity cards

The amendments made by items 4 and 5 of this Schedule apply to:

- (a) identity cards issued during the period of 12 months immediately before the commencement of those items; and
- (b) identity cards issued on or after the commencement of those items.

11 Amendment relating to civil penalty orders

The amendment made by item 6 of this Schedule applies in relation to an application for a civil penalty order made on or after the commencement of that item.

12 Amendments relating to infringement notices

The amendments made by items 7 and 8 of this Schedule apply in relation to infringement notices issued on or after the commencement of those items.

Schedule 2—Amendment of the Australian Sports Anti-Doping Authority Act 2006

Part 1—Amendments

Australian Sports Anti-Doping Authority Act 2006

1 Section 4 (definition of *civil penalty order*)

Repeal the definition.

2 Section 4 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

3 Section 4

Repeal the following definitions:

- (a) definition of *conduct*;
- (b) definition of *evidential burden*.

4 Section 4

Insert:

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

5 Section 4 (definition of *relevant court*)

Repeal the definition.

6 Subsection 13C(2) (note)

Repeal the note, substitute:

Note: A person bears an evidential burden in relation to a matter in subsection (2) (see section 96 of the Regulatory Powers Act).

7 Part 8A

Repeal the Part, substitute:

Part 8A—Civil penalty provisions

71 Simplified outline of this Part

This Part applies the Regulatory Powers Act to enable the CEO to enforce civil penalty provisions. Orders may be sought from a court in relation to contraventions of such provisions.

72 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the CEO, on behalf of the Commonwealth, is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Part 8B—Infringement notices

73A Simplified outline of this Part

This Part applies the Regulatory Powers Act to enable the CEO to issue an infringement notice in relation to the alleged contravention of a civil penalty provision.

73B Infringement notices

Provisions subject to an infringement notice

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following persons is an infringement officer in relation to the provisions mentioned in subsection (1):
 - (a) the CEO;
 - (b) a person authorised by the CEO for the purposes of this paragraph.

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The CEO may, in writing, delegate the CEO's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1) to:
 - (a) a member of the ASADA staff; or
 - (b) an individual whose services are made available to the CEO under section 24M.

(5) A delegate must comply with any written directions of the CEO.

Extension to external Territories

(6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

8 Section 80

Repeal the section.

Part 2—Application and saving provisions

9 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Part 8A of the *Australian Sports Anti-Doping Authority Act 2006*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Part 8A of the *Australian Sports Anti-Doping Authority Act 2006*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

10 Application and saving provision—infringement notices

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Part 8B of the *Australian Sports Anti-Doping Authority Act 2006*, applies in relation to alleged contraventions of provisions referred to in subsection 73B(1) of the *Australian Sports Anti-Doping Authority Act 2006* occurring on or after the commencement of this Schedule.
- (2) Regulations made under section 80 of the *Australian Sports Anti-Doping Authority Act 2006*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to alleged contraventions of civil penalty provisions of the *Australian Sports Anti-Doping Authority Act 2006* occurring before the commencement of this Schedule.

Schedule 3—Amendment of the Building Energy Efficiency Disclosure Act 2010

Part 1—Amendments

Building Energy Efficiency Disclosure Act 2010

1 Section 3 (definition of *civil penalty order*)

Repeal the definition.

2 Section 3 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

3 Section 3

Insert:

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

4 Subsection 8(2)

Omit “to a pecuniary penalty or”.

5 Subsections 11(5) and 15(5)

After “civil penalty order”, insert “under the Regulatory Powers Act”.

6 Subsection 18(7)

Repeal the subsection, substitute:

(7) If a person contravenes subsection (6) by failing to give access at a day and time on which access is required under a notice, the person commits a separate contravention of that subsection in respect of each day after the day required under the notice, including a day of the making of the relevant civil penalty order and any subsequent day.

Note: If a person contravenes subsection (6) by failing to give information within the period specified in the notice, under section 93 of the

Regulatory Powers Act, the person commits a separate contravention of that subsection in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

7 Subsection 49(1)

After “civil penalty provision”, insert “of this Act”.

8 Divisions 2 and 3 of Part 5

Repeal the Divisions, substitute:

Division 2—Civil penalties

51 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.
- (3) The Secretary may, in writing, delegate to an SES employee or acting SES employee in the Department the Secretary’s powers and functions as an authorised applicant in relation to the civil penalty provisions of this Act.
- (4) In exercising powers or performing functions delegated under subsection (3), the delegate must comply with any directions of the Secretary.

Relevant court

- (5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court of Australia;
- (b) the Federal Circuit Court of Australia.

Maximum amount of pecuniary penalty

- (6) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty payable under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, must not be more than the amount worked out under section 52 of this Act.

Extension to external Territories

- (7) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Liability of Crown

- (8) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not make the Crown liable to a pecuniary penalty.
- (9) The protection in subsection (8) does not apply to an authority of the Crown.

52 Maximum amount of pecuniary penalty

- (1) Subject to this section, the pecuniary penalty payable by a person under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to a civil penalty provision of this Act, must not exceed the pecuniary penalty specified for the civil penalty provision in this Act.
- (2) If:
 - (a) the contravention is of a requirement under section 11 in relation to a continuing offer or a continuing invitation; and
 - (b) the contravention is in respect of one or more days that fall after the first day on which the offer or invitation is made; the pecuniary penalty must not exceed 100 penalty units for each day that falls after the first day.
- (3) If:

(a) the contravention is of a requirement under section 15 in relation to a continuing advertisement; and

(b) the contravention is in respect of one or more days that fall after the first day on which advertising began;

the pecuniary penalty must not exceed 100 penalty units for each day that falls after the first day.

(4) If:

(a) the contravention is of a requirement under section 18 in relation to giving information within a period specified in a notice; and

(b) the contravention is in respect of one or more days that fall after the end of that period;

the pecuniary penalty must not exceed 20 penalty units for an individual and 50 penalty units for a body corporate for each day that falls after the end of that period.

(5) If:

(a) the contravention is of a requirement under section 18 in relation to giving access to a place at a day and time specified in a notice; and

(b) the contravention is in respect of one or more days that fall after the day specified;

the pecuniary penalty must not exceed 20 penalty units for an individual and 50 penalty units for a body corporate for each day that falls after the day specified.

Division 3—Infringement notices

53 Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Delegation by the Secretary

(4) The Secretary may, in writing, delegate to an SES employee or acting SES employee in the Department the Secretary's powers and functions as an infringement officer or as the relevant chief executive in relation to the provisions mentioned in subsection (1).

(5) In exercising powers or performing functions delegated under subsection (4), the delegate must comply with any directions of the Secretary.

Single infringement notice dealing with multiple contraventions

(6) Despite subsection 103(3) of the Regulatory Powers Act, an infringement officer may give a person a single infringement notice relating to multiple contraventions of subsection 18(6) that are alleged to have occurred because the person failed to give access to a place at a particular day and time specified in a notice under subsection 18(4) and continued to fail to do so after that day and time.

Amount payable under an infringement notice

(7) Despite subsections 104(2) and (3) of the Regulatory Powers Act, the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of that Act in relation to a civil penalty provision of this Act must not exceed an amount equal to:

(a) if the notice relates to only one alleged contravention of the provision by the person—one-tenth of the maximum penalty that a Court could impose on the person for that contravention; or

- (b) if the notice relates to more than one alleged contravention of the provision by the person—one-tenth of the amount worked out by adding together the maximum penalty that a Court could impose on the person for each alleged contravention.

Time limits on representations seeking withdrawal of notice

- (8) If a person to whom an infringement notice has been given in relation to a provision mentioned in subsection (1) wishes to make written representations to the Secretary under subsection 106(1) of the Regulatory Powers Act:
 - (a) the person must do so within 28 days after the infringement notice is given; and
 - (b) despite paragraph 106(3)(a) of the Regulatory Powers Act, the Secretary need not take into account any representations in relation to the infringement notice made after the end of that period.

Extension to external Territories

- (9) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

9 Paragraph 65(3)(a)

Omit “Division 3”, substitute “Part 5 of the Regulatory Powers Act in relation to a civil penalty provision of this Act”.

10 Paragraph 65(3)(b)

After “order”, insert “under the Regulatory Powers Act”.

11 Subparagraph 70(1)(a)(iii)

Omit “; and”, substitute “; or”.

12 At the end of paragraph 70(1)(a)

Add:

- (iv) obtains or generates information in the course of exercising powers or performing function under the Regulatory Powers Act, as it applies in relation to this Act; and

Part 2—Application and saving provisions

13 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part 5 of the *Building Energy Efficiency Disclosure Act 2010*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Division 2 of Part 5 of the *Building Energy Efficiency Disclosure Act 2010*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

14 Application and saving provision—infringement notices

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 5 of the *Building Energy Efficiency Disclosure Act 2010*, applies in relation to alleged contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Division 3 of Part 5 of the *Building Energy Efficiency Disclosure Act 2010*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to alleged contraventions of civil penalty provisions occurring before the commencement of this Schedule.

15 Saving provision—Energy Efficiency Non-disclosure Register

- (1) An infringement notice given to a person under Division 3 of Part 5 of the *Building Energy Efficiency Disclosure Act 2010*, as it applies to alleged contraventions of civil penalty provisions occurring before the commencement of this Schedule, is taken to be an instance of non-disclosure under section 65 of that Act as amended by this Schedule.
- (2) A civil penalty order made by a Court under subsection 53(2) of the *Building Energy Efficiency Disclosure Act 2010* before, on or after the

commencement of this Schedule for a contravention of section 11, subsection 12(6) or section 15 of that Act is taken to be an instance of non-disclosure under section 65 of that Act as amended by this Schedule.

Schedule 4—Amendments of the Coal Mining Industry (Long Service Leave) Legislation

Part 1—Amendments

Coal Mining Industry (Long Service Leave) Administration Act 1992

1 Subsection 4(1) (definition of *civil penalty order*)

Repeal the definition.

2 Subsection 4(1) (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

3 Subsection 4(1)

Insert:

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

4 At the end of subsections 39AB(3) and (4)

Add:

Civil penalty: 60 penalty units.

5 Subsection 39AB(5) (note)

Omit “Note”, substitute “Note 1”.

6 At the end of subsection 39AB(5)

Add:

Note 2: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

7 Subsection 39AB(6)

Repeal the subsection (including the notes).

8 At the end of subsection 39AC(1)

Add:

Civil penalty: 60 penalty units.

9 Subsection 39AC(2)

Repeal the subsection.

10 At the end of section 39AC

Add:

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

11 Subsection 39AD(1)

Omit “(1)”.

12 At the end of subsection 39AD(1)

Add:

Civil penalty: 60 penalty units.

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

13 Subsection 39AD(2)

Repeal the subsection (including the notes).

14 Subsection 39BE(1)

Omit “(1)”.

15 At the end of subsection 39BE(1)

Add:

Civil penalty: 60 penalty units.

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

16 Subsection 39BE(2)

Repeal the subsection (including the notes).

17 At the end of subsection 39C(1)

Add:

Civil penalty: 60 penalty units.

18 At the end of subsection 39C(2)

Add:

Civil penalty: 60 penalty units.

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

19 Subsection 39C(3)

Repeal the subsection (including the notes).

20 At the end of subsection 39CA(2)

Add:

Civil penalty: 60 penalty units.

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

21 Subsection 39CA(3)

Repeal the subsection (including the notes).

22 At the end of subsection 39CB(2)

Add:

Civil penalty: 60 penalty units.

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

23 Subsection 39CB(3)

Repeal the subsection (including the notes).

24 At the end of subsection 39CC(2)

Add:

Civil penalty: 60 penalty units.

Note: Division 4 of this Part provides other remedies for contraventions of civil penalty provisions.

25 Subsection 39CC(3)

Repeal the subsection (including the notes).

26 Part 7A (heading)

Repeal the heading, substitute:

Part 7A—Civil penalties

27 Divisions 1 and 2 of Part 7A

Repeal the Divisions, substitute:

49A Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Corporation, on behalf of the Commonwealth, is an authorised applicant in relation to the civil penalty provisions of this Act.
- (3) The Corporation may, by writing under its seal, delegate its powers as an authorised applicant in relation to the civil penalty provisions of this Act to:
 - (a) a Director; or
 - (b) a person employed by the Corporation; or
 - (c) a person engaged by the Corporation under a contract; or
 - (d) a person employed by a person referred to in paragraph (c).

Relevant court

(4) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court;
- (b) the Federal Circuit Court.

Additional matters to be taken into account in determining a pecuniary penalty

(5) In addition to the matters the court must take into account under subsection 82(6) of the Regulatory Powers Act in determining the pecuniary penalty for the contravention of a civil penalty provision of this Act, if the person who contravened the civil penalty provision is a body corporate, the court must take into account:

- (a) the level of the employees, officers or agents of the body corporate involved in the contravention; and
- (b) whether the body corporate exercised due diligence to avoid the contravention; and
- (c) whether the body corporate had a corporate culture conducive to compliance.

28 Division 3 of Part 7A (heading)

Repeal the heading.

29 Sections 49C to 49CD

Repeal the sections.

30 Subsection 49CE(1)

Omit “(1)”.

31 At the end of subsection 49CE(1)

Add:

Civil penalty: 60 penalty units.

32 Subsection 49CE(2)

Repeal the subsection.

33 Paragraph 49CF(1)(a)

Omit “and the Payroll Levy Collection Act”.

34 Paragraph 49CF(1)(b)

Omit “or the Payroll Levy Collection Act”.

35 At the end of subsection 52A(5)

Add:

Civil penalty: 60 penalty units.

36 Subsection 52A(7)

Repeal the subsection (including the note).

Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992

37 Section 3

Insert:

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

executive officer has the same meaning as in the *Coal Mining Industry (Long Service Leave) Administration Act 1992*.

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

38 At the end of subsection 5(1)

Add:

Civil penalty: 40 penalty units.

39 Subsection 5(4)

Repeal the subsection (including the note).

40 At the end of subsection 10(1)

Add:

Civil penalty: 40 penalty units.

41 Subsection 10(3)

Repeal the subsection (including the note).

42 At the end of subsection 10A(3)

Add:

Civil penalty: 40 penalty units.

43 Subsection 10A(5)

Repeal the subsection (including the note).

44 After section 13

Insert:

13A Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Corporation, on behalf of the Commonwealth, is an authorised applicant in relation to the civil penalty provisions of this Act.
- (3) The Corporation may, by writing under its seal, delegate its powers as an authorised applicant in relation to the civil penalty provisions of this Act to:
 - (a) a member of the Board of Directors of the Corporation; or
 - (b) a person employed by the Corporation; or
 - (c) a person engaged by the Corporation under a contract; or
 - (d) a person employed by a person referred to in paragraph (c).

Relevant court

(4) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court;
- (b) the Federal Circuit Court.

Additional matters to be taken into account in determining a pecuniary penalty

(5) In addition to the matters the court must take into account under subsection 82(6) of the Regulatory Powers Act in determining the pecuniary penalty for the contravention of a civil penalty provision of this Act, if the person who contravened the civil penalty provision is a body corporate, the court must take into account:

- (a) the level of the employees, officers or agents of the body corporate involved in the contravention; and
- (b) whether the body corporate exercised due diligence to avoid the contravention; and
- (c) whether the body corporate had a corporate culture conducive to compliance.

13B Civil penalty provisions contravened by executive officers

An executive officer of a body corporate contravenes this section if:

- (a) the body corporate contravenes a civil penalty provision; and
- (b) the officer knew that the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention.

Civil penalty: 60 penalty units.

13C Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision

(1) For the purposes of section 13B, in determining whether an executive officer of a body corporate failed to take all reasonable

steps to prevent the contravention of a civil penalty provision, a court is to have regard to:

- (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act, in so far as those requirements affect the employees, agents or contractors concerned; and
- (b) what action (if any) the officer took when the officer became aware that the body was contravening this Act.

(2) This section does not, by implication, limit the generality of section 13B.

Part 2—Application and saving provisions

45 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Part 7A of the *Coal Mining Industry (Long Service Leave) Administration Act 1992*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 13A of the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (3) Part 7A of the *Coal Mining Industry (Long Service Leave) Administration Act 1992*, as in force immediately before the commencement of this Schedule, continues to apply on and after the commencement of this Schedule in relation to contraventions occurring before that commencement of provisions declared to be civil penalty provisions by the *Coal Mining Industry (Long Service Leave) Administration Act 1992* or the *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*, as in force immediately before the commencement of this Schedule.

Schedule 5—Amendment of the Defence Act 1903

Part 1—Amendments

Defence Act 1903

1 Subsection 4(1)

Insert:

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

2 At the end of subsection 72TG(2)

Add:

Note: See also section 72TO (about infringement notices for a contravention of this section).

3 After section 72TN

Insert:

72TO Infringement notices

Provisions subject to an infringement notice

- (1) A strict liability offence against subsection 72TG(1) is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) The Secretary may, by written instrument, appoint one or more of the following persons to be an infringement officer:
 - (a) a member of the Defence Force;
 - (b) an APS employee in the Department.

For the purposes of Part 5 of the Regulatory Powers Act, a person so appointed is an infringement officer in relation to the provision mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provision mentioned in subsection (1).
- (4) The Secretary may, in writing, delegate his or her powers and functions as the relevant chief executive in relation to the provision mentioned in subsection (1) to:
 - (a) an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, in the Department; or
 - (b) an officer of the Navy who holds the rank of Commander or a higher rank; or
 - (c) an officer of the Army who holds the rank of Lieutenant-Colonel or a higher rank; or
 - (d) an officer of the Air Force who holds the rank of Wing Commander or a higher rank.

Additional matters to be included in infringement notices

- (5) In addition to the matters mentioned in subsection 104(1) of the Regulatory Powers Act, an infringement notice given in relation to an alleged contravention of the provision mentioned in subsection (1) of this section must also state that demerit points may be incurred if:
 - (a) the amount payable under the notice is paid; or
 - (b) the person is convicted or found guilty of the alleged contravention.

Withdrawal of an infringement notice

- (6) Despite subparagraph 106(3)(b)(i) of the Regulatory Powers Act, when deciding whether or not to withdraw an infringement notice given to a person, the Secretary may take into account whether a court has previously imposed a penalty on the person for a contravention of section 72TC, 72TG or 72TJ of this Act.

Effect of payment of amount

- (7) In addition to the matters mentioned in subsection 107(1) of the Regulatory Powers Act, if the person to whom an infringement

notice is given for an alleged contravention of the provision mentioned in subsection (1) of this section pays the amount stated in the notice before the end of the period referred to in paragraph 104(1)(h) of that Act, demerit points may be incurred in accordance with Part 7 of the Rules.

Extension to external Territories

(8) Part 5 of the Regulatory Powers Act, as it applies in relation to the provision mentioned in subsection (1), extends to every external Territory.

4 Subsections 72TP(4) and (5)

Repeal the subsections.

Part 2—Application and saving provision

5 Application and saving provision—infringement notices

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 72TO of the *Defence Act 1903*, applies in relation to alleged contraventions of subsection 72TG(1) of the *Defence Act 1903* occurring on or after the commencement of this Schedule.
- (2) Part 6 of the *Woomera Prohibited Area Rule 2014*, as in force immediately before the commencement of this Schedule, applies in relation to alleged contraventions of subsection 72TG(1) of the *Defence Act 1903* occurring before the commencement of this Schedule.
- (3) If, immediately before the repeal of subsections 72TP(4) and (5) of the *Defence Act 1903* by item 4 of this Schedule, a person was an authorised person for the purposes of Part 6 of the *Woomera Prohibited Area Rule 2014*, on and after the commencement of that item, the person is taken to have been appointed as an infringement officer by the Secretary under subsection 72TO(2) of the *Defence Act 1903*.
- (4) Subitem (3) does not prevent the Secretary from:
 - (a) rescinding the appointment of a person who was an authorised person immediately before the repeal of subsections 72TP(4) and (5); or
 - (b) appointing that or another person as an infringement officer under subsection 72TO(2) of the *Defence Act 1903*.
- (5) Nothing in this Schedule affects the application of Part 7 of the *Woomera Prohibited Area Rule 2014* to contraventions of subsection 72TG(1) of the *Defence Act 1903*, whether occurring before, on or after the commencement of this Schedule.

Schedule 6—Amendment of the Defence Reserve Service (Protection) Act 2001

Part 1—Amendments

Defence Reserve Service (Protection) Act 2001

1 Section 7

Insert:

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

2 Section 75

Repeal the section, substitute:

75 Injunctions

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note 1: The expression ***this Act*** has an extended meaning (see section 7).

Note 2: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):

- (a) an interested person;
- (b) a prescribed person acting on behalf of an interested person.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, a court mentioned in subsection 77(1) of this Act is a relevant court in relation to the provisions mentioned in subsection (1) of this section.

Extension to external Territories

(4) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Part 2—Application and saving provisions

3 Application and saving provisions— injunctions

- (1) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 75 of the *Defence Reserve Service (Protection) Act 2001*, applies in relation to contraventions occurring on or after the commencement of this Schedule.
- (2) Section 75 of the *Defence Reserve Service (Protection) Act 2001*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions occurring before the commencement of this Schedule.
- (3) If, immediately before the repeal of section 75 of the *Defence Reserve Service (Protection) Act 2001* by item 2 of this Schedule, a person holding or acting in a particular office was a prescribed person for the purposes of paragraph 75(1)(b) of that Act, a person holding or acting in that office is taken to be a prescribed person for the purposes of paragraph 75(2)(b) of that Act, as that paragraph applies in relation to contraventions occurring on or after the commencement of this Schedule.
- (4) Subitem (3) does not prevent the regulations from being amended or repealed by the Governor-General to change who is to be a prescribed person for the purposes of paragraph 75(2)(b) of the *Defence Reserve Service (Protection) Act 2001*.

Schedule 7—Amendment of the Greenhouse and Energy Minimum Standards Act 2012

Part 1—Amendments

Greenhouse and Energy Minimum Standards Act 2012

1 Section 3

Omit:

Compliance and enforcement (Parts 7 and 8)

Compliance with the rules about supply and commercial use can be monitored, and suspected contraventions can be investigated, by GEMS inspectors appointed under the Act. The Act sets out the circumstances in which inspections can take place, the powers of inspectors and the requirements for obtaining warrants for entry to premises without consent and, in the case of investigation warrants, for the seizure of evidential material.

A contravention of this Act may result in prosecution for an offence, exposure to liability for a civil penalty (under an infringement notice or a court order), suspension or cancellation of registration, the imposition of enforceable undertakings and court orders for injunctions. Details of offences, contraventions and adverse decisions, including the names of those involved, may also be publicised.

substitute:

Monitoring, investigation and enforcement (Parts 7 and 8)

GEMS inspectors may enter public areas of premises used in connection with the supply of GEMS products. GEMS inspectors may purchase GEMS products there (and exercise certain other powers) in order to investigate compliance with this Act.

GEMS inspectors and the GEMS Regulator have powers to monitor compliance with this Act, to monitor whether information given under this Act is correct and to investigate suspected non-compliance with this Act. Infringement notices may be issued for suspected contraventions of civil penalty provisions of this Act. Enforceable undertakings and injunctions may be used to enforce compliance with this Act.

Details of offences, contraventions and adverse decisions, including the names of those involved, may also be publicised.

2 Section 5 (definition of *civil penalty order*)

Repeal the definition.

3 Section 5 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

4 Section 5

Insert:

compliance obligation: each of the following is a compliance obligation:

- (a) an offence against this Act;
- (b) a civil penalty provision of this Act;
- (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

5 Section 5

Repeal the following definitions:

- (a) definition of *damage*;
- (b) definition of *enforceable*;
- (c) definition of *evidential material*;
- (d) definition of *investigation powers*;
- (e) definition of *investigation warrant*;
- (f) definition of *monitoring powers*;
- (g) definition of *monitoring warrant*;

(h) definition of **person assisting**.

6 Section 5

Insert:

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

7 Section 5 (definition of *related provision*)

Repeal the definition.

8 Section 5 (after paragraph (a) of the definition of *relevant court*)

Insert:

(aa) the Federal Circuit Court of Australia; or

9 Section 5 (definition of *secure*)

Repeal the definition.

10 Section 6

Repeal the section, substitute:

6 Contravening an offence provision or a civil penalty provision

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

Note: The expression ***this Act*** has an extended meaning (see the Dictionary in section 5).

(2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

11 Subsection 7(3)

Repeal the subsection.

12 Subsection 16(5) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

13 Subsection 16(6) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

14 Subsection 16(8)

After “civil penalty order”, insert “under the Regulatory Powers Act”.

15 Subsection 17(5) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

16 Subsection 17(6) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

17 Subsection 17(8)

After “civil penalty order”, insert “under the Regulatory Powers Act”.

18 Subsection 18(5) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

19 Subsection 18(6) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

20 Subsection 18(8)

After “civil penalty order”, insert “under the Regulatory Powers Act”.

21 Subsection 19(5) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

22 Subsection 19(6) (note 1)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

23 Subsection 19(8)

After “civil penalty order”, insert “under the Regulatory Powers Act”.

24 Subsection 55(3) (note)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

25 Subsection 59(1) (note)

Repeal the note.

26 Paragraph 59(3)(b)

Omit “related provision”, substitute “compliance obligation”.

27 At the end of paragraph 59(3)(c)

Add “under the Regulatory Powers Act”.

28 At the end of section 59

Add:

Powers conferred personally

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

Powers need not be accepted

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

Protection and immunity

- (7) An issuing officer exercising a power conferred by this section has the same protection and immunity as if the issuing officer were exercising the power:
 - (a) as the court of which the issuing officer is a member; or

(b) as a member of the court of which the issuing officer is a member.

29 Subsection 62(3) (note)

Omit “section 144”, substitute “section 94 of the Regulatory Powers Act”.

30 Section 81

Omit:

Division 4 (monitoring) authorises a GEMS inspector to enter premises and exercise a range of powers (monitoring powers) for the purposes of monitoring compliance with this Act. An inspector may do so with the occupier’s consent or under a monitoring warrant (issued by a magistrate or judge (an issuing officer)). If evidence of a contravention of this Act is found, the inspector may secure the evidence for up to 24 hours (or for an extended period authorised by an issuing officer).

Division 5 (investigation) authorises a GEMS inspector to enter premises and exercise a range of powers (investigation powers) if the inspector has reasonable grounds for suspecting that there is something on the premises that is connected with a contravention of this Act. An inspector may enter the premises with the occupier’s consent or under an investigation warrant issued by an issuing officer. An investigation warrant also authorises the inspector to seize that thing, or similar things, as specified in the warrant.

Division 6 contains rules relevant to both monitoring and investigation, such as the obligations and other powers of GEMS inspectors when entering premises, and the rights and responsibilities of occupiers.

substitute:

Division 4 applies the Regulatory Powers Act to allow GEMS inspectors to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers there under that Act, for the purposes of determining:

- (a) whether this Act has been, or is being, complied with; or
- (b) whether information given in compliance or purported compliance with this Act is correct.

Division 5 applies the Regulatory Powers Act to allow GEMS inspectors to enter premises under an investigation warrant or with consent of the occupier and to exercise investigation powers there under that Act, for the purposes of gathering material that relates to the contravention of offence and civil penalty provisions in this Act.

31 Section 81

Omit:

Division 9 deals with the powers of issuing officers in relation to the issue of warrants.

32 Sections 84 and 85

Repeal the sections.

33 Paragraph 86(2)(c)

Omit “related provision”, substitute “compliance obligation”.

34 Subsection 86(4)

Omit “Division 4, 5 or 6 of this Part”, substitute “the Regulatory Powers Act”.

35 Divisions 4 to 6 of Part 7

Repeal the Divisions, substitute:

Division 4—Monitoring

87 Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

- (a) a provision of this Act; or
- (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note 1: The expression *this Act* has an extended meaning (see the Dictionary in section 5).

Note 2: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), there are no related provisions.

Authorised applicant

- (4) For the purposes of Part 2 of the Regulatory Powers Act, a GEMS inspector is an authorised applicant in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Authorised person

- (5) For the purposes of Part 2 of the Regulatory Powers Act, a GEMS inspector is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

- (6) If a person is an issuing officer for the purposes of this Act, then, for the purposes of Part 2 of the Regulatory Powers Act, the person

is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Relevant chief executive

- (7) For the purposes of Part 2 of the Regulatory Powers Act, the GEMS Regulator is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).
- (8) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions as the relevant chief executive under Part 2 of the Regulatory Powers Act, in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.
- (9) However, the GEMS Regulator must not delegate a power or function, under subsection (8), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.
- (10) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

Identity card for the GEMS Regulator

- (11) Despite subsection 35(1) of the Regulatory Powers Act, the Secretary must issue an identity card to the GEMS Regulator.

Relevant court

- (12) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 2 of the Regulatory Powers Act, the court is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Person assisting

- (13) For the purposes of Part 2 of the Regulatory Powers Act, a GEMS inspector may be assisted by other persons in exercising powers or performing functions or duties under that Part in relation to the

provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Use of force in executing a warrant

- (14) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
 - (a) a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

- (15) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

Division 5—Investigation

88 Investigation powers

Provisions subject to investigation

- (1) Each compliance obligation is subject to investigation under Part 3 of the Regulatory Powers Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a compliance obligation, there are no related provisions.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act, a GEMS inspector is an authorised applicant in relation to evidential material that relates to a compliance obligation.

Authorised person

(4) For the purposes of Part 3 of the Regulatory Powers Act, a GEMS inspector is an authorised person in relation to evidential material that relates to a compliance obligation.

Issuing officer

(5) If a person is an issuing officer for the purposes of this Act, then, for the purposes of Part 3 of the Regulatory Powers Act, the person is an issuing officer in relation to evidential material that relates to a compliance obligation.

Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act, the GEMS Regulator is the relevant chief executive in relation to evidential material that relates to a compliance obligation.

(7) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions as the relevant chief executive under Part 3 of the Regulatory Powers Act, in relation to evidential material that relates to a compliance obligation, to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.

(8) However, the GEMS Regulator must not delegate a power or function, under subsection (7), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.

(9) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

Identity card for the GEMS Regulator

(10) Despite subsection 76(1) of the Regulatory Powers Act, the Secretary must issue an identity card to the GEMS Regulator.

Relevant court

(11) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 3 of the Regulatory Powers Act, the court is a relevant court in relation to evidential material that relates to a compliance obligation.

Person assisting

(12) For the purposes of Part 3 of the Regulatory Powers Act, a GEMS inspector may be assisted by other persons in exercising powers or performing functions or duties under that Part in relation to evidential material that relates to a compliance obligation.

Use of force in executing a warrant

(13) In executing an investigation warrant under Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a compliance obligation:

- (a) a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances; and
- (b) a person assisting a GEMS inspector may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

(14) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a compliance obligation, extends to every external Territory.

36 Paragraph 126(1)(d)

Repeal the paragraph, substitute:

- (d) a GEMS product seized under Part 3 of the Regulatory Powers Act, as that Part applies under section 88 of this Act.

37 Division 9 of Part 7

Repeal the Division.

38 Section 128

Omit:

Division 2 allows a court to order a person to pay a pecuniary penalty for contravening a civil penalty provision of this Act.

Division 3 allows GEMS inspectors to give infringement notices for alleged contraventions of civil penalty provisions of this Act. If a person does not pay an amount in accordance with the notice, the person may be required to pay a higher amount under a civil penalty order, or be subject to a criminal prosecution (if the alleged contravention also constitutes an offence).

Division 4 deals with enforceable undertakings. If a person gives an undertaking relating to complying with this Act, the undertaking may be enforced by a court order.

Division 5 allows injunctions to be sought for contraventions, or potential contraventions, of this Act.

Division 6 allows the GEMS Regulator to publicise details of enforcement action taken under this Part, including the names of persons in relation to whom the action has been taken. In addition, certain adverse decisions relating to the registration of models of GEMS products may be publicised, including the names of registrants.

substitute:

Division 2 provides that a civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act. A relevant court may order a person contravening a civil penalty provision to pay to the Commonwealth a pecuniary penalty.

Division 3 provides that infringement notices under Part 5 of the Regulatory Powers Act may be issued for suspected contraventions of civil penalty provisions of this Act. Such a notice allows a person to pay an amount as an alternative to having court proceedings brought against the person for the contravention.

Division 4 provides that undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act. If a person gives such an undertaking, the undertaking may be enforced by a court order.

Division 5 provides that injunctions (including interim injunctions) under Part 7 of the Regulatory Powers Act may be used to restrain a person from contravening a provision of this Act or to compel compliance with a provision of this Act.

Division 6 allows the GEMS Regulator to publicise details of enforcement action taken under the Regulatory Powers Act, including the names of persons in relation to whom the action has been taken. In addition, certain adverse decisions relating to the registration of models of GEMS products may be publicised, including the names of registrants.

39 Divisions 2 to 5 of Part 8

Repeal the Divisions, substitute:

Division 2—Civil penalties

129 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the GEMS Regulator is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 4 of the Regulatory Powers Act, the court is a relevant court in relation to the civil penalty provisions of this Act.

Exceptions etc. to civil penalty provisions—burden of proof

(4) Section 96 (Exceptions etc. to civil penalty provisions—burden of proof) of the Regulatory Powers Act does not apply in relation to proceedings for a civil penalty order for a contravention of a civil penalty provision under Part 3 of this Act.

Extension to external Territories

(5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Liability of Crown

(6) To avoid doubt, subsection 7(2) does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to this Act.

Division 3—Infringement notices

130 Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, a GEMS inspector is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the GEMS Regulator is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The GEMS Regulator may, by writing, delegate one or more of his or her powers or functions as the relevant chief executive under Part 5 of the Regulatory Powers Act, in relation to the provisions mentioned in subsection (1), to an officer or employee of an agency (however described) of the Commonwealth, a State or a Territory.
- (5) However, the GEMS Regulator must not delegate a power or function, under subsection (4), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.
- (6) A delegate of the GEMS Regulator is subject to the GEMS Regulator's directions while exercising the delegate's delegated powers and functions.

Additional matters to be included in infringement notices

- (7) In addition to the matters included in subsection 104(1) of the Regulatory Powers Act, an infringement notice given in relation to an alleged contravention of a provision mentioned in subsection (1) must also state that the giving of the notice and the payment of the amount payable under the notice may be publicised under section 162 of this Act.

Extension to external Territories

- (8) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Liability of Crown

- (9) To avoid doubt, subsection 7(2) does not prevent the Crown from being liable to be given an infringement notice under Part 5 of the Regulatory Powers Act, as that Part applies in relation to this Act.

Division 4—Enforceable undertakings

131 Enforceable undertakings

Enforceable provisions

(1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:

- (a) an offence against this Act; or
- (b) a civil penalty provision of this Act.

Note 1: The expression *this Act* has an extended meaning (see the Dictionary in section 5).

Note 2: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the GEMS Regulator is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 6 of the Regulatory Powers Act, the court is a relevant court in relation to the provisions mentioned in subsection (1).

Other undertakings

(4) The GEMS Regulator may accept a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention by the person of a provision mentioned in subsection (1), pay another person an amount worked out in accordance with the undertaking. The undertaking must be expressed to be an undertaking under this subsection.

(5) The power in subsection (4) is in addition to the power of the GEMS Regulator under subsection 114(1) of the Regulatory Powers Act.

(6) Part 6 of the Regulatory Powers Act, other than subsection 114(1), applies to an undertaking accepted under subsection (4) of this section as if it were an undertaking accepted under subsection 114(1) of the Regulatory Powers Act.

Extension to external Territories

(7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Division 5—Injunctions

132 Injunctions

Enforceable provisions

(1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is:

- an offence against Part 3 or 5 of this Act; or
- a civil penalty provision of Part 3 or 5 of this Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, the GEMS Regulator is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) If a court is a relevant court for the purposes of this Act, then, for the purposes of Part 7 of the Regulatory Powers Act, the court is a relevant court in relation to the provisions mentioned in subsection (1).

Consent injunctions

(4) A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) by consent of all the parties to proceedings brought

under that Part, whether or not the court is satisfied that section 121 of that Act applies.

Extension to external Territories

(5) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

40 Paragraph 162(1)(b)

After “civil penalty order”, insert “under the Regulatory Powers Act”.

41 Paragraph 162(1)(b)

After “provision”, insert “of this Act”.

42 Paragraph 162(1)(c)

Omit “under section 146”, substitute “, in relation to a civil penalty provision of this Act, under section 103 of the Regulatory Powers Act”.

43 Paragraph 162(1)(c)

After “provision”, insert “of this Act”.

44 Paragraph 162(1)(d)

Omit “an infringement notice given under section 146”, substitute “such an infringement notice”.

45 Paragraph 162(1)(e)

Omit “that an undertaking given under section 154 by a person has been accepted”, substitute “that an undertaking, in relation to this Act, has been accepted under subsection 114(1) of the Regulatory Powers Act (including because of subsection 131(6) of this Act)”.

46 Paragraph 162(1)(f)

Omit “that an order has been made against a person under subsection 155(2) in relation to a breach of an undertaking given under section 154”, substitute “that an order has been made against a person under subsection 115(2) of the Regulatory Powers Act in relation to a breach of such an undertaking”.

47 Paragraph 162(1)(g)

Omit “that an injunction under section 157”, substitute “that an injunction, in relation to this Act, under section 121 of the Regulatory Powers Act”.

Part 2—Application and saving provisions

48 Saving provision—suppling GEMS products

Subsections 16(8), 17(8), 18(8) and 19(8) of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to proceedings for a civil penalty order instituted under Division 2 of Part 8 of that Act before the commencement of this Schedule.

49 Application and saving provision—retention of GEMS products

- (1) The amendment of paragraph 59(3)(c) of the *Greenhouse and Energy Minimum Standards Act 2012* made by this Schedule does not affect the validity of an order made under subsection 59(3) of that Act before the commencement of this Schedule.
- (2) Subsection 59(7) of the *Greenhouse and Energy Minimum Standards Act 2012*, as added by this Schedule, applies in relation to a power exercised before, on or after the commencement of this Schedule.

50 Saving provision—identity cards

Despite the repeal of section 85 of the *Greenhouse and Energy Minimum Standards Act 2012* made by this Schedule, that section, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to a person who ceased to be a GEMS inspector before the commencement of this Schedule.

51 Application and saving provision—monitoring

- (1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 7 of the *Greenhouse and Energy Minimum Standards Act 2012*, applies in relation to the following:
 - (a) determining compliance with the compliance obligations (within the meaning of the *Greenhouse and Energy Minimum Standards Act 2012*) before, on or after the commencement of this Schedule;

(b) determining whether information given before, on or after that commencement in compliance, or purported compliance, with this Act (within the meaning of the *Greenhouse and Energy Minimum Standards Act 2012*) is correct.

(2) Sections 84 and 85 and Divisions 4 and 6 of Part 7 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to the following:

- (a) an application for a monitoring warrant made, but not decided, under that Part before that commencement;
- (b) a monitoring warrant issued under that Part before, on or after that commencement as a result of an application made before that commencement;
- (c) powers exercised, rights created and duties imposed under that Part before, on or after that commencement as a result of:
 - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of a monitoring warrant referred to in paragraph (b);
- (d) a requirement made under subsection 118(3) of that Act before, on or after that commencement.

52 Application and saving provision—investigation

(1) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 7 of the *Greenhouse and Energy Minimum Standards Act 2012*, applies in relation to contraventions occurring before, on or after the commencement of this Schedule.

(2) Sections 84 and 85 and Divisions 5 and 6 of Part 7 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to the following:

- (a) an application for an investigation warrant made, but not decided, under that Part before that commencement;
- (b) an investigation warrant issued under that Part before, on or after that commencement as a result of an application made before that commencement;

- (c) powers exercised, rights created and duties imposed under that Part before, on or after that commencement as a result of:
 - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of an investigation warrant referred to in paragraph (b);
- (d) things seized under that Part before, on or after that commencement;
- (e) a requirement made under subsection 118(3) of that Act before, on or after that commencement.

53 Saving provision—testing of GEMS products etc.

Despite the repeal and substitution of paragraph 126(1)(d) of the *Greenhouse and Energy Minimum Standards Act 2012* made by this Schedule, that paragraph, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to a GEMS product seized under section 96 or 100 of that Act before, on or after the commencement of this Schedule.

54 Saving provision—issuing officers

Division 9 of Part 7 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to the following:

- (a) a power conferred on an issuing officer under that Part before that commencement;
- (b) a power exercised by an issuing officer under that Part before, on or after that commencement.

55 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.

(2) Division 2 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

56 Application and saving provision—infringement notices

(1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, applies in relation to alleged contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.

(2) Division 3 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to alleged contraventions of civil penalty provisions occurring before the commencement of this Schedule.

57 Saving provision—enforceable undertakings

(1) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, applies in relation to undertakings given on or after the commencement of this Schedule.

(2) Division 4 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to the following:

- (a) an undertaking given under that Division before the commencement of this Schedule;
- (b) an application for an order made, but not decided, under that Division before the commencement of this Schedule;
- (c) an order made under that Division before, on or after the commencement of this Schedule as a result of an application made before that commencement.

58 Application and saving provision—injunctions

(1) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 8 of the *Greenhouse and Energy*

Minimum Standards Act 2012, applies in relation to contraventions occurring on or after the commencement of this Schedule.

(2) Division 5 of Part 8 of the *Greenhouse and Energy Minimum Standards Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions occurring before the commencement of this Schedule.

59 Saving provision—publicising certain offences, contraventions and adverse decisions

Despite the amendments of paragraphs 162(1)(b), (c), (d), (e), (f) and (g) of the *Greenhouse and Energy Minimum Standards Act 2012* made by this Schedule, those paragraphs, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to the following:

- (a) a civil penalty order made under Division 2 of Part 8 of that Act before, on or after that commencement;
- (b) an infringement notice given under section 146 of that Act before that commencement;
- (c) an undertaking given under section 154 of that Act before that commencement;
- (d) an order made under subsection 155(2) of that Act before, on or after that commencement;
- (e) an injunction granted under section 157 of that Act before, on or after that commencement.

Schedule 8—Amendment of the Horse Disease Response Levy Collection Act 2011

Part 1—Amendments

Horse Disease Response Levy Collection Act 2011

1 Section 3

Repeal the following definitions:

- (a) definition of *damage*;
- (b) definition of *monitoring powers*;
- (c) definition of *monitoring warrant*;
- (d) definition of *person assisting*;
- (e) definition of *premises*.

2 Section 3

Insert:

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

3 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Enforcement

4 Division 2 of Part 3

Repeal the Division, substitute:

Division 2—Monitoring

Subdivision A—Monitoring powers

13 Monitoring powers

Provisions subject to monitoring

(1) The levy law is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the levy law has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with the levy law or Division 1 of this Part is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the levy law and to the information mentioned in subsection (2), there are no related provisions.

Authorised applicant

(4) If a person is an authorised person for the purposes of any provision of this Act, then, for the purposes of Part 2 of the Regulatory Powers Act, the person is an authorised applicant in relation to the levy law and to the information mentioned in subsection (2).

Authorised person

(5) If a person is an authorised person for the purposes of any provision of this Act, then, for the purposes of Part 2 of the Regulatory Powers Act, the person is an authorised person in

relation to the levy law and to the information mentioned in subsection (2).

Issuing officer

(6) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the levy law and to the information mentioned in subsection (2).

Relevant chief executive

(7) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the levy law and to the information mentioned in subsection (2).

(8) The Secretary may, in writing, delegate the powers under Part 2 of the Regulatory Powers Act in relation to the levy law, or in relation to the information mentioned in subsection (2), to an APS employee in the Department.

(9) In the exercise of a power delegated under subsection (8), a delegate is subject to the directions of the Secretary.

(10) If the Secretary gives a direction under subsection (9) in writing, the direction is not a legislative instrument.

Relevant court

(11) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the levy law and to the information mentioned in subsection (2):

- the Federal Court of Australia;
- the Federal Circuit Court of Australia.

Additional monitoring powers

(12) For the purposes of determining:

- whether a provision of the levy law has been, or is being, complied with; or
- the correctness of information mentioned in subsection (2); the additional power mentioned in subsection (13) is taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.

(13) The additional monitoring power is the power to seize any thing at any premises entered under section 18 of the Regulatory Powers Act, as that section applies in relation to the levy law or the information mentioned in subsection (2).

Person assisting

(14) For the purposes of Part 2 of the Regulatory Powers Act, an authorised person may be assisted by other persons in exercising powers or performing functions or duties under that Part in relation to the levy law and to the information mentioned in subsection (2).

Subdivision B—General provisions relating to seizure

14 Copies of seized things to be provided

(1) This section applies if an authorised person seizes one or more of the following from the premises under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the levy law and to the information mentioned in subsection 13(2) of this Act:

- (a) a document, film, computer file or other thing that can be readily copied;
- (b) a storage device, the information in which can be readily copied.

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

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

(4) However, the authorised person is not required to comply with the 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.

15 Receipts for seized things

(1) The authorised person must provide a receipt for a thing that is seized under Part 2 of the Regulatory Powers Act, as that Part

applies in relation to the levy law and to the information mentioned in subsection 13(2) of this Act.

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

16 Return of seized things

(1) The Secretary must take reasonable steps to return a thing seized under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the levy law and to the information mentioned in subsection 13(2) of this Act, when the earliest of the following happens:

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

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

Exceptions

(2) Subsection (1):

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

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

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and those proceedings (and any appeal from those proceedings) have not been completed; or
- (b) the thing may continue to be retained because of an order under section 17; or
- (c) the Commonwealth or the Secretary is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Return of thing

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

17 Magistrate may permit a thing to be retained

(1) The Secretary may apply to a magistrate for an order permitting the retention of a thing seized under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the levy law and to the information mentioned in subsection 13(2) of this Act, for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:

- (a) 60 days after the seizure; or
- (b) a period previously specified in an order of a magistrate under this section.

(2) Before making the application, the Secretary must:

- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
- (b) if it is practicable to do so, notify each person whom the Secretary believes to have such an interest of the proposed application.

(3) Any person notified under paragraph (2)(b) is entitled to be heard in relation to the application.

Order to retain thing

(4) The magistrate may order that the thing may continue to be retained for a period specified in the order if the magistrate is satisfied that it is necessary for the thing to continue to be retained:

- (a) for the purposes of an investigation as to the existence or amount of a liability under the levy law; or
- (b) to enable evidence of such a liability to be secured for the purposes of recovering levy or late payment penalty.

(5) The period specified must not exceed 3 years.

18 Disposal of things

- (1) The Secretary may dispose of a thing seized under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the levy law and to the information mentioned in subsection 13(2) of this Act, if:
 - (a) the Secretary has taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the Secretary has been unable to locate the person; or
 - (ii) the person has refused to take possession of the thing.
- (2) The Secretary may dispose of the thing in such manner as the Secretary thinks appropriate.

19 Compensation for acquisition of property

- (1) If the operation of section 18 would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia, or the Federal Circuit Court of Australia, for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:
acquisition of property has the same meaning as in paragraph 51(xxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxi) of the Constitution.

5 Section 38

Repeal the section.

Part 2—Application and saving provisions

6 Application and saving provision—monitoring

(1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part 3 of the *Horse Disease Response Levy Collection Act 2011*, applies in relation to the following:

- (a) determining whether the levy law has been complied with before, on or after the commencement of this Schedule;
- (b) determining whether information given in compliance, or purported compliance, with the levy law or Division 1 of Part 3 of the *Horse Disease Response Levy Collection Act 2011* before, on or after that commencement is correct.

(2) Division 2 of Part 3 and section 38 of the *Horse Disease Response Levy Collection Act 2011*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to the following:

- (a) an application for a monitoring warrant made, but not decided, under that Part before that commencement;
- (b) a monitoring warrant issued under that Part before, on or after that commencement as a result of an application made before that commencement;
- (c) powers exercised, rights created and duties imposed under that Part before, on or after that commencement in relation to:
 - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of a monitoring warrant referred to in paragraph (b);
- (d) things secured or seized under that Part before, on or after that commencement;
- (e) a requirement made under subsection 18(3) of that Act before, on or after that commencement;
- (f) a power conferred on a magistrate under that Part before that commencement;
- (g) a power exercised by a magistrate under that Part before, on or after that commencement.

7 Saving provision—identity cards

Despite the repeal of section 38 of the *Horse Disease Response Levy Collection Act 2011* made by this Schedule, that section, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to a person who ceased to be an authorised person before that commencement.

Schedule 9—Amendment of the Illegal Logging Prohibition Act 2012

Part 1—Amendments

Illegal Logging Prohibition Act 2012

1 Section 6

Omit:

Part 4 provides for inspectors to exercise monitoring, investigation and enforcement powers for the purposes of this Act.

substitute:

Part 4 applies the Regulatory Powers Act to enable inspectors to exercise monitoring, investigation and enforcement powers for the purposes of this Act.

2 Section 7 (definition of *civil penalty order*)

Repeal the definition.

3 Section 7 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

4 Section 7

Repeal the following definitions:

- (a) definition of *contravention*;
- (b) definition of *damage*;
- (c) definition of *evidential burden*;
- (d) definition of *evidential material*;
- (e) definition of *investigation powers*;
- (f) definition of *investigation warrant*;
- (g) definition of *issuing officer*;

- (h) definition of ***monitoring powers***;
- (i) definition of ***monitoring warrant***;
- (j) definition of ***occupier***;
- (k) definition of ***person assisting***;
- (l) definition of ***premises***.

5 Section 7

Insert:

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

6 Section 7 (definition of *relevant court*)

Repeal the definition.

7 Section 20

Repeal the section.

8 Divisions 2 to 6 of Part 4

Repeal the Divisions, substitute:

Division 2—Monitoring

21 Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the *Regulatory Powers Act* if it is:
 - (a) a provision of this Act; or
 - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the *Regulatory Powers Act* creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), there are no related provisions.

Authorised applicant and authorised person

(4) For the purposes of Part 2 of the Regulatory Powers Act, an inspector is both an authorised applicant and an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

(5) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):

- (a) a magistrate;
- (b) a Judge of a court of a State or Territory;
- (c) if a Judge of the Federal Circuit Court of Australia or a Judge of the Federal Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge.

Relevant chief executive

(6) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

- (7) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).
- (8) A person exercising powers or functions under a delegation under subsection (6) must comply with any directions of the Secretary.

Relevant court

- (9) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia.

Additional monitoring powers

- (10) For the purposes of determining:
 - (a) whether a provision mentioned in subsection (1) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection (2); the additional power mentioned in subsection (11) is taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (11) The additional monitoring power is the power to sample any thing at any premises entered under section 18 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsection (1) or the information mentioned in subsection (2).

Person assisting

- (12) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Does not extend to external Territories

(13) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), does not extend to the external Territories.

Division 3—Investigation

22 Investigation powers

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:

- (a) an offence against this Act; or
- (b) a civil penalty provision of this Act; or
- (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant and authorised person

(3) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is both an authorised applicant and an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(4) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1):

- (a) a magistrate;
- (b) a Judge of a court of a State or Territory;
- (c) if a Judge of the Federal Circuit Court of Australia or a Judge of the Federal Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge.

Relevant chief executive

- (5) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (6) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).
- (7) A person exercising powers or functions under a delegation under subsection (6) must comply with any directions of the Secretary.

Relevant court

- (8) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia.

Additional investigation power

- (9) The additional power mentioned in subsection (10) is taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1).
- (10) The additional investigation power is the power to sample any thing on premises entered under section 48 of the Regulatory Powers Act as that section applies in relation to evidential material that relates to a provision mentioned in subsection (1).

Use of force in executing a warrant

- (11) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Person assisting

- (12) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Does not extend to external Territories

- (13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), does not extend to the external Territories.

Division 4—Civil penalties

23 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia.

Does not extend to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, does not extend to the external Territories.

Division 5—Infringement notices

24 Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
 - (a) a strict liability offence against this Act;
 - (b) a civil penalty provision of this Act;
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an inspector is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers

and functions as the relevant chief executive in relation to the provisions mentioned in subsection (1).

(5) A person exercising powers or functions under a delegation under subsection (4) must comply with any directions of the Secretary.

Does not extend to external Territories

(6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), does not extend to the external Territories.

Part 2—Application and saving provisions

9 Saving provision—identity cards

Despite the repeal of section 20 of the *Illegal Logging Prohibition Act 2012* made by this Schedule, that section, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to a person who ceased to be an inspector before that commencement.

10 Application and saving provision—monitoring and investigation

- (1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part 4 of the *Illegal Logging Prohibition Act 2012* applies in relation to:
 - (a) determining whether a provision mentioned in subsection 21(1) of the *Illegal Logging Prohibition Act 2012* has been complied with before, on or after the commencement of this Schedule; and
 - (b) determining whether information given in compliance, or purported compliance, with a provision of the *Illegal Logging Prohibition Act 2012* before, on or after the commencement of this Schedule is correct.
- (2) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 4 of the *Illegal Logging Prohibition Act 2012*, applies in relation to evidential material that relates to a provision mentioned in subsection 22(1) of the *Illegal Logging Prohibition Act 2012*, if the suspected contravention of the provision occurred before, on or after the commencement of this Schedule.
- (3) Divisions 2 to 4 of Part 4 of the *Illegal Logging Prohibition Act 2012*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to the following:
 - (a) an application for a warrant made, but not decided, under the relevant Division before the commencement of this Schedule;
 - (b) a warrant issued, or completed and signed, under the relevant Division before, on or after the commencement of this

Schedule as a result of an application made before that commencement;

- (c) powers exercised, rights created and duties imposed, under the relevant Division before, on or after the commencement of this Schedule in relation to:
 - (i) an entry onto premises before that commencement with the consent of the occupiers of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of a warrant referred to in paragraph (b);
- (d) things secured or seized under the relevant Division before, on or after the commencement of this Schedule;
- (e) a requirement made under section 54 of that Act before, on or after the commencement of this Schedule.

11 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 4 of the *Illegal Logging Prohibition Act 2012*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Division 5 of Part 4 of the *Illegal Logging Prohibition Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

12 Application and saving provision—infringement notices

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 4 of the *Illegal Logging Prohibition Act 2012*, applies in relation to alleged contraventions of provisions mentioned in subsection 24(1) of the *Illegal Logging Prohibition Act 2012* occurring on or after the commencement of this Schedule.
- (2) Division 6 of Part 4 of the *Illegal Logging Prohibition Act 2012*, as in force immediately before the commencement of this Schedule, continues to apply in relation to alleged contraventions of offence and civil penalty provisions in that Act, and alleged contraventions of

provisions of the *Crimes Act 1914* or the *Criminal Code* that relate to that Act, occurring before the commencement of this Schedule.

Schedule 10—Amendment of the Industrial Chemicals (Notification and Assessment) Act 1989

Part 1—Amendments

Industrial Chemicals (Notification and Assessment) Act 1989

1 Subsection 5(1) (at the end of the definition of *exempt information*)

Add:

Note: See also subsection 89(3).

2 Subsection 5(1)

Insert:

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

3 Section 76

After “under this Act” (first occurring), insert “or the Regulatory Powers Act as that Act applies in relation to this Act or the regulations”.

4 Paragraph 76(a)

After “under this Act”, insert “or the Regulatory Powers Act as that Act applies in relation to this Act or the regulations”.

5 Section 83

Repeal the section, substitute:

83 Injunctions

Enforceable provisions

- (1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is:
 - (a) an offence against this Act or the regulations; or

Part 1 Amendments

(b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the regulations.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):

- (a) the Minister;
- (b) any other person.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit Court of Australia;
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional matters relevant to court's power to grant injunctions

(4) The power of a relevant court under Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), to grant an injunction restraining a person from engaging in conduct may be exercised whether or not conduct of that kind constitutes a serious and immediate risk of adverse health effects or adverse environmental effects.

(5) The power of a relevant court under Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), to grant an injunction requiring a person to do a thing may be exercised whether or not there is a serious and immediate risk of adverse health effects or adverse environmental effects if the person refuses or fails to do that thing.

(6) Subsections (4) and (5) are in addition to, and do not limit, subsections 124(1) and (2) of the Regulatory Powers Act.

Extension to external Territories

(7) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

6 Sections 85 to 88

Repeal the sections, substitute:

Division 3—Monitoring

85 Monitoring powers

Provisions subject to monitoring

(1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:

- (a) the provisions of this Act and the regulations;
- (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the regulations.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act and the regulations have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision of this Act or the regulations is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Related provisions

(3) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), there are no related provisions.

Authorised applicant

(4) For the purposes of Part 2 of the Regulatory Powers Act, an inspector is an authorised applicant in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Authorised person

(5) For the purposes of Part 2 of the Regulatory Powers Act, an inspector is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Issuing officer

(6) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Relevant chief executive

(7) For the purposes of Part 2 of the Regulatory Powers Act, the Director is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

(8) The Director may, in writing, delegate the Director's powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2) to:

- (a) a person whose classification level appears in Group 7 or 8 of Schedule 1 to the Classification Rules under the *Public Service Act 1999*; or
- (b) a person who is acting in a position usually occupied by a person with a classification level of a kind mentioned in paragraph (a).

Relevant court

(9) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions

mentioned in subsection (1) and the information mentioned in subsection (2):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit Court of Australia;
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

- (10) For the purposes of Part 2 of the Regulatory Powers Act, an inspector may be assisted by other persons in exercising powers or performing functions or duties under that Part in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

Use of force in executing a warrant

- (11) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) or the information mentioned in subsection (2):
 - (a) an inspector may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting an inspector may use such force against things as is necessary and reasonable in the circumstances.

Additional monitoring powers

- (12) For the purposes of determining:
 - (a) whether a provision mentioned in subsection (1) has been, or is being, complied with; or
 - (b) the correctness of information mentioned in subsection (2); the additional powers mentioned in subsection (13) are taken to be included in the monitoring powers under Part 2 of the Act.
- (13) The additional monitoring powers are the powers to take and keep samples of any substance at any premises entered under section 18 of the Regulatory Powers Act, as that section applies in relation to the provisions mentioned in subsection (1) or the information mentioned in subsection (2).

Extension to external Territories

(14) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

Division 4—Investigation

86 Investigation powers

Provisions subject to investigation

(1) The following provisions are subject to investigation under Part 3 of the Regulatory Powers Act:

- (a) an offence against this Act or the regulations;
- (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the regulations.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

(2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant

(3) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

Authorised person

(4) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act, the Director is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

(7) The Director may, in writing, delegate the Director's powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1) to:

- (a) a person whose classification level appears in Group 7 or 8 of Schedule 1 to the Classification Rules under the *Public Service Act 1999*; or
- (b) a person who is acting in a position usually occupied by a person with a classification level of a kind mentioned in paragraph (a).

Relevant court

(8) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

- (a) the Federal Court of Australia;
- (b) the Federal Circuit Court of Australia;
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(9) An inspector may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Use of force in executing a warrant

- (10) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) an inspector may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting an inspector may use such force against things as is necessary and reasonable in the circumstances.

Extension to external Territories

- (11) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

7 Section 89

Repeal the section, substitute:

Division 5—Exempt information given to inspectors

89 Exempt information given to inspectors

- (1) If:
 - (a) an inspector enters premises under Part 2 or 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections 85(1) and 86(1) of this Act, and the information mentioned in subsection 85(2) of this Act; and
 - (b) the inspector asks the occupier of the premises, or requires any person on the premises, to answer any question or produce any document;the occupier or person may apply to the Director, in the approved form, for one or more of the following to be treated as exempt information under section 75:
 - (c) specified information given in answer to the question;
 - (d) specified information in the document;
 - (e) specified information obtained by the inspector, or a person assisting the inspector, because of that entry or of the exercise of powers under that Part as a result of that entry.

- (2) Before making such an application, the occupier of the premises, or the person on the premises, may inform the inspector of:
 - (a) the occupier's or person's intention to make such an application; and
 - (b) the information (the *prospective information*) to be specified in such an application.
- (3) If the occupier of the premises, or the person on the premises, so informs the inspector, the prospective information is taken to be exempt information for the purposes of this Act until whichever of the following occurs first:
 - (a) the occupier or person makes the application;
 - (b) the end of the period of 7 days beginning on the day the inspector was so informed.

8 Section 104

Omit “sections 83 and 105”, substitute “section 105”.

Part 2—Application and saving provisions

9 Application and saving provision— injunctions

- (1) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 83 of the *Industrial Chemicals (Notification and Assessment) Act 1989*, applies in relation to contraventions occurring on or after the commencement of this Schedule.
- (2) Section 83 of the *Industrial Chemicals (Notification and Assessment) Act 1989*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions occurring before the commencement of this Schedule.

10 Saving provision—identity cards

Despite the repeal of section 85 of the *Industrial Chemicals (Notification and Assessment) Act 1989* made by this Schedule, that section, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to a person who ceased to be an inspector before that commencement.

11 Application and saving provisions—monitoring and investigation

- (1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 4 of the *Industrial Chemicals (Notification and Assessment) Act 1989*, applies in relation to:
 - (a) determining whether a provision mentioned in subsection 85(1) of the *Industrial Chemicals (Notification and Assessment) Act 1989* has been complied with before, on or after the commencement of this Schedule; and
 - (b) determining whether information given in compliance or purported compliance with a provision of the *Industrial Chemicals (Notification and Assessment) Act 1989*, or the regulations under that Act, before on or after the commencement of this Schedule is correct.
- (2) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 4 of the *Industrial Chemicals*

(Notification and Assessment) Act 1989, applies in relation to evidential material that relates to a provision mentioned in subsection 86(1) of the *Industrial Chemicals (Notification and Assessment) Act 1989*, if the suspected contravention of the provision occurred before, on or after the commencement of this Schedule.

(3) Sections 85 to 88 of the *Industrial Chemicals (Notification and Assessment) Act 1989*, as in force immediately before the commencement of this Schedule, continue to apply on and after that commencement in relation to the following:

- (a) an application for a warrant made, but not decided, under section 86 or 87 of that Act before that commencement;
- (b) a warrant issued under section 86 or 87 of that Act before, on or after that commencement as a result of an application made before that commencement;
- (c) powers exercised under section 86 or 87 of that Act before, on or after that commencement in relation to:
 - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of a warrant referred to in paragraph (b);
- (d) things seized under section 87 of that Act before, on or after that commencement;
- (e) a requirement made under subsection 88(1) of that Act before, on or after that commencement.

12 Saving provision—exempt information

(1) Information that is exempt information immediately before the commencement of this Schedule because of an application under paragraph 89(1)(d) of the *Industrial Chemicals (Notification and Assessment) Act 1989* continues to be exempt information on and after that commencement.

(2) If:

- (a) before the commencement of this Schedule, an application was made under paragraph 89(1)(d) of the *Industrial Chemicals (Notification and Assessment) Act 1989*; but
- (b) the application was not finalised before that commencement;

then that Act, as in force immediately before that commencement, continues to apply on and after that commencement in relation to:

- (c) that application; and
- (d) information that is exempt information as a result of that application.

(3) If:

- (a) before the commencement of this Schedule, a person informed an inspector under paragraph 89(1)(e) of the *Industrial Chemicals (Notification and Assessment) Act 1989* of the person's intention to make an application; but
- (b) before that commencement, the application had not been made and the 7-day period mentioned in paragraph 89(2)(b) of that Act had not ended;

then:

- (c) that Act, as in force immediately before that commencement, continues to apply on and after that commencement in relation to the informing of the inspector; and
- (d) in particular, the person may make an application on or after that commencement under paragraph 89(1)(d) of that Act as in force immediately before that commencement.

13 Saving provision—regulations

The amendments of the *Industrial Chemicals (Notification and Assessment) Act 1989* made by this Schedule do not affect the continuity of regulations that were made for the purposes of section 110 of that Act and were in force immediately before the commencement of this Schedule.

Schedule 11—Amendment of the Paid Parental Leave Act 2010

Part 1—Amendments

Paid Parental Leave Act 2010

1 Subsection 3(3)

Repeal the subsection.

2 Section 6 (definition of *civil penalty order*)

Repeal the definition.

3 Section 6 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

4 Section 6 (definition of *infringement notice*)

Repeal the definition.

5 Section 6 (definition of *involved in*)

Repeal the definition.

6 Section 6

Insert:

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

7 At the end of subsection 127(1)

Add “, or the Regulatory Powers Act as that Act applies in relation to this Act”.

8 Paragraph 127(2)(d)

After “for the purposes of this Act”, insert “, or the Regulatory Powers Act as that Act applies in relation to this Act”.

9 Subsection 128(1)

After “under this Act” (first occurring), insert “or the Regulatory Powers Act as that Act applies in relation to this Act”.

10 Section 140

Omit “Civil penalty orders may be sought in relation to contraventions of civil penalty provisions”, substitute “Civil penalty orders may be sought under Part 4 of the Regulatory Powers Act in relation to contraventions of the civil penalty provisions of this Act”.

11 Section 140

After “Division 5 deals with infringement notices.”, insert “An infringement notice may be issued under Part 5 of the Regulatory Powers Act for an alleged contravention of a civil penalty provision of this Act.”.

12 Section 140

After “a civil penalty order”, insert “under Part 4 of the Regulatory Powers Act”.

13 Section 145

Repeal the section.

14 Section 146

Omit “A provision referred to in column 1 of an item in the table is a **civil penalty provision**.”, substitute “A provision referred to in column 1 of an item in the table is a **civil penalty provision**, and the pecuniary penalty for the civil penalty provision is that specified in column 2 of that item.”.

15 Section 146 (table, heading to column 2)

Repeal the heading, substitute:

Column 2

Penalty

16 At the end of section 146

Add:

Note: Under subsection 82(5) of the Regulatory Powers Act the pecuniary penalty imposed must be no more than that specified (or, for a body corporate, no more than 5 times that specified).

17 Sections 147 to 155

Repeal the sections, substitute:

147 Civil penalty orders

Enforceable civil penalty provisions

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:

- (a) the Secretary;
- (b) the Fair Work Ombudsman.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court;
- (b) the Federal Circuit Court.

Delegation

(4) The Secretary may, in writing, delegate the Secretary's powers and functions under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, to:

- (a) the Chief Executive Centrelink; or
- (b) the Chief Executive Medicare; or
- (c) an SES employee or an acting SES employee.

- (5) If the Secretary delegates any of the Secretary's powers or functions under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, to the Chief Executive Centrelink, the Chief Executive Centrelink cannot, despite any provision in the *Human Services (Centrelink) Act 1997*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:
 - (a) an SES employee; nor
 - (b) an acting SES employee.
- (6) If the Secretary delegates any of the Secretary's powers or functions under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, to the Chief Executive Medicare, the Chief Executive Medicare cannot, despite any provision in the *Human Services (Medicare) Act 1973*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:
 - (a) an SES employee; nor
 - (b) an acting SES employee.

Territories of Christmas Island and Cocos (Keeling) Islands

- (7) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

Liability of Crown

- (8) To avoid doubt, subsection 3(2) does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act.

18 Paragraph 156(1)(a)

After "civil penalty order", insert "under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act".

19 Subsection 156(6)

After "civil penalty order", insert "under the Regulatory Powers Act".

20 Division 5 of Part 4-2

Repeal the Division, substitute:

Division 5—Infringement notices

159 Infringement notices

Provisions subject to an infringement notice

- (1) The following civil penalty provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
 - (a) subsection 82(2) (which deals with notifying the Secretary if certain events happen);
 - (b) section 103 (which deals with responding to an employer determination);
 - (c) subsection 105(3) (which deals with giving bank account and pay cycle information etc. after a review);
 - (d) subsection 157(4), in relation to a compliance notice given to a person by the Secretary.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer and relevant chief executive for the provisions mentioned in subsection (1)

- (2) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is an infringement officer and the relevant chief executive in relation to the provisions mentioned in subsection (1).

Further provisions subject to an infringement notice

- (3) The following civil penalty provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
 - (a) subsection 70(2) (which deals with unauthorised deductions from instalments);
 - (b) subsection 72(1), (2) or (3) (which deals with when an employer pays instalments);
 - (c) section 74 (which deals with the method of payment of instalments payable by an employer);

- (d) section 80 (which deals with giving a person a record of a payment);
- (e) subsection 81(1) or (2) (which deals with keeping records);
- (f) subsection 157(4), in relation to a compliance notice given to a person by the Fair Work Ombudsman.

Infringement officer and relevant chief executive for the provisions mentioned in subsection (3)

- (4) For the purposes of Part 5 of the Regulatory Powers Act, the Fair Work Ombudsman is an infringement officer and the relevant chief executive in relation to the provisions mentioned in subsection (3).

Time limit for giving an infringement notice

- (5) Despite subsection 103(2) of the Regulatory Powers Act, an infringement notice given in relation to a failure to comply with a compliance notice under subsection 157(4) must be given within 12 months of the day on which the 14-day period referred to in subsection 157(3) of this Act ends.

Amount to be stated in infringement notice

- (6) Despite subsections 104(2) and (3) of the Regulatory Powers Act, the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of that Act in relation to a provision mentioned in subsection (1) or (3) must be:
 - (a) if the infringement notice is given to a body corporate for a single contravention:
 - (i) in relation to a contravention of section 80 (which deals with giving a person a record of payments) or subsection 81(1) or (2) (which deals with keeping records)—15 penalty units; and
 - (ii) in relation to a contravention of a compliance notice given in relation to a contravention of section 80 or subsection 81(1) or (2)—15 penalty units; and
 - (iii) otherwise—30 penalty units; or
 - (b) if the infringement notice is given to a person other than a body corporate for a single contravention:
 - (i) in relation to a contravention of section 80 (which deals with giving a person a record of payments) or

subsection 81(1) or (2) (which deals with keeping records)—3 penalty units; and

- (ii) in relation to a contravention of a compliance notice given in relation to a contravention of section 80 or subsection 81(1) or (2)—3 penalty units; and
- (iii) otherwise—6 penalty units; or

(c) if the infringement notice is given to a person (whether or not a body corporate) for a number of contraventions—the number of penalty units worked out by multiplying the penalty units for a single contravention (worked out under paragraph (a) or (b)) by the number of alleged contraventions to which the notice relates.

Delegation

- (7) The Secretary may, in writing, delegate the Secretary's powers and functions under Part 5 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1) or (3), to:
 - (a) the Chief Executive Centrelink; or
 - (b) the Chief Executive Medicare; or
 - (c) an SES employee or an acting SES employee.
- (8) If the Secretary delegates any of the Secretary's powers or functions under Part 5 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1) or (3), to the Chief Executive Centrelink, the Chief Executive Centrelink cannot, despite any provision in the *Human Services (Centrelink) Act 1997*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:
 - (a) an SES employee; nor
 - (b) an acting SES employee.
- (9) If the Secretary delegates any of the Secretary's powers or functions under Part 5 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1) or (3), to the Chief Executive Medicare, the Chief Executive Medicare cannot, despite any provision in the *Human Services (Medicare) Act 1973*, delegate the power to a Departmental employee (within the meaning of that Act) who is neither:
 - (a) an SES employee; nor

(b) an acting SES employee.

Territories of Christmas Island and Cocos (Keeling) Islands

(10) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsections (1) and (3), extends to the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

21 At the end of section 201A

Add “under the Regulatory Powers Act”.

22 Subsection 303(1)

Omit “Divisions 3 and 5 of Part 4-2 and”.

23 Subsection 303(1)

Omit “which deal with civil penalty orders, infringement notices and”, substitute “which deals with”.

24 Subsection 303(2)

Omit “Divisions 3 and 5 of Part 4-2 and”.

25 Subsection 303(2)

Omit “which deal with civil penalty orders, infringement notices and”, substitute “which deals with”.

26 Subsections 303(3), (3A) and (3B)

Repeal the subsections.

Part 2—Application and saving provisions

27 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies in relation to Division 3 of Part 4-2 of the *Paid Parental Leave Act 2010*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Division 3 of Part 4-2 of the *Paid Parental Leave Act 2010*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

28 Application and saving provision—infringement notices

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies in relation to Division 5 of Part 4-2 of the *Paid Parental Leave Act 2010*, applies in relation to alleged contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Division 5 of Part 4-2 of the *Paid Parental Leave Act 2010*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to alleged contraventions of civil penalty provisions occurring before the commencement of this Schedule.

Schedule 12—Amendment of the Personal Property Securities Act 2009

Part 1—Amendments

Personal Property Securities Act 2009

1 Section 3

Omit:

Chapter 6 deals with the role of the courts in proceedings that relate to security interests in personal property. It confers jurisdiction on courts and provides rules for the transfer of proceedings between courts. It also describes the Registrar's role in judicial proceedings and contains provisions about proceedings for contravention of a civil penalty provision.

substitute:

Chapter 6 deals with the role of the courts in proceedings that relate to security interests in personal property. It confers jurisdiction on courts and provides rules for the transfer of proceedings between courts. It also describes the Registrar's role in judicial proceedings and applies Parts 4 and 6 of the Regulatory Powers Act to enable contraventions of civil penalty provisions to be enforced.

2 Section 10 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

3 Section 10 (definition of *evidential burden*)

Repeal the definition.

4 Section 10

Insert:

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

5 Subsections 151(1) and (2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 50 penalty units.

6 Subsection 151(4)

Repeal the subsection.

7 Subsection 172(3) (penalty)

Repeal the penalty, substitute:

Civil penalty: 50 penalty units.

8 Subsection 172(4)

Repeal the subsection.

9 Subsection 195A(4) (penalty)

Repeal the penalty, substitute:

Civil penalty: 50 penalty units.

10 Section 204

Omit:

Part 6.3 deals with proceedings for contravention of a civil penalty provision.

substitute:

Part 6.3 applies Parts 4 and 6 of the Regulatory Powers Act, which deal with proceedings for contravention of a civil penalty provision and enforceable undertakings.

11 Subsection 206(6)

Omit “(civil penalty proceedings)”, substitute “(civil penalties and enforceable undertakings)”.

12 Part 6.3

Repeal the Part, substitute:

Part 6.3—Civil penalties and enforceable undertakings

220 Guide to this Part

This Part applies Part 4 of the Regulatory Powers Act to enable the Registrar to enforce civil penalty provisions, and Part 6 of the Regulatory Powers Act to enable the Registrar to accept an enforceable undertaking.

On application by the Registrar, a relevant court can order the payment of a civil penalty for a breach of a civil penalty provision.

The Registrar may accept a written undertaking for the payment of a specified amount to the Commonwealth within a specified period. The undertaking is given by a person who has taken action that contravenes a civil penalty provision.

221 Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Registrar is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court;
- (b) the Federal Circuit Court;
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

(4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to Norfolk Island and such other external Territories (if any) as are prescribed by the regulations for the purposes of section 7.

222 Enforceable undertakings

Enforceable provisions

(1) Each civil penalty provision of this Act is enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Registrar is an authorised person in relation to the civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court;
- (b) the Federal Circuit Court;
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

(4) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to Norfolk Island and such other external Territories (if any) as are prescribed by the regulations for the purposes of section 7.

Part 2—Application and saving provisions

13 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 221 of the *Personal Property Securities Act 2009*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Divisions 1 to 3 of Part 6.3 of the *Personal Property Securities Act 2009*, as in force immediately before the commencement of this Schedule, continue to apply on and after the commencement of this Schedule in relation to contraventions of civil penalty provisions occurring before that commencement.

14 Application and saving provision—enforceable undertakings

- (1) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 222 of the *Personal Property Securities Act 2009*, applies in relation to undertakings given on or after the commencement of this Schedule.
- (2) Division 4 of Part 6.3 of the *Personal Property Securities Act 2009*, as in force immediately before the commencement of this Schedule, continues to apply on and after the commencement in relation to the following:
 - (a) an undertaking given before the commencement of this Schedule;
 - (b) an application for an order made, but not decided, under subsection 231(1) of that Act before the commencement of this Schedule;
 - (c) an order made under subsection 231(2) of that Act before, on or after the commencement of this Schedule as a result of an application made before that commencement.

Schedule 13—Amendment of the Privacy Act 1988

Part 1—Amendments

Privacy Act 1988

1 Subsection 6(1) (definition of *civil penalty order*)

Repeal the definition.

2 Subsection 6(1) (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

3 Subsection 6(1)

Insert:

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

4 Subparagraph 25(1)(a)(i)

Repeal the subparagraph, substitute:

- (i) a civil penalty order has been made under subsection 82(3) of the Regulatory Powers Act against the entity for a contravention of a civil penalty provision of this Act (other than section 13G); or

5 Subparagraph 25A(1)(a)(i)

Repeal the subparagraph, substitute:

- (i) a civil penalty order has been made under subsection 82(3) of the Regulatory Powers Act against the entity for a contravention of a civil penalty provision of this Act (other than section 13G); or

6 Division 3B of Part IV

Repeal the Division.

7 Part VIB

Repeal the Part, substitute:

Part VIB—Enforcement

Division 1—Civil penalties

80U Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, the Commissioner is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
 - (a) the Federal Court;
 - (b) the Federal Circuit Court.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Division 2—Enforceable undertakings

80V Enforceable undertakings

Enforceable provisions

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
 - (a) the Federal Court;
 - (b) the Federal Circuit Court.

Enforceable undertaking may be published on the Commissioner's website

- (4) The Commissioner may publish an undertaking given in relation to the provision on the Commissioner's website.

Extension to external Territories

- (5) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Division 3—Injunctions

80W Injunctions

Enforceable provisions

- (1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):
 - (a) the Commissioner;
 - (b) any other person.

Relevant court

- (3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
 - (a) the Federal Court;
 - (b) the Federal Circuit Court.

Extension to external Territories

- (4) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

8 Section 98

Repeal the section.

9 Section 99A

After “civil penalty order” (wherever occurring), insert “under the Regulatory Powers Act (as it applies in relation to the civil penalty provisions of this Act)”.

Part 2—Application and saving provision

10 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 1 of Part VIB of the *Privacy Act 1988*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Part VIB of the *Privacy Act 1988*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

11 Application and saving provision—enforceable undertakings

- (1) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 80V of the *Privacy Act 1988*, applies in relation to undertakings given on or after the commencement of this Schedule.
- (2) Division 3B of Part IV of the *Privacy Act 1988*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to the following:
 - (a) an undertaking given before the commencement of this Schedule;
 - (b) an application for an order made, but not decided, under subsection 33F(1) of that Act before the commencement of this Schedule;
 - (c) an order made under subsection 33F(2) of that Act before, on or after the commencement of this Schedule as a result of an application made before that commencement.

12 Application and saving provision—injunctions

- (1) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part VIB of the *Privacy Act 1988*, applies in relation to contraventions occurring on or after the commencement of this Schedule.

(2) Section 98 of the *Privacy Act 1988*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions occurring before the commencement of this Schedule.

Schedule 14—Amendment of the Tobacco Plain Packaging Act 2011

Part 1—Amendments

Tobacco Plain Packaging Act 2011

1 Subsection 4(1) (definition of *civil penalty order*)

Repeal the definition.

2 Subsection 4(1) (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

3 Subsection 4(1)

Repeal the following definitions:

- (a) definition of *evidential burden*;
- (b) definition of *evidential material*;
- (c) definition of *Federal Court*;
- (d) definition of *issuing officer*;
- (e) definition of *person assisting*.

4 Subsection 4(1)

Insert:

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

5 Subsection 4(1)

Repeal the following definitions:

- (a) definition of *search powers*;
- (b) definition of *warrant*.

6 Subsection 7(1)

Omit “(1) For”, substitute “For”.

7 Subsection 7(2)

Repeal the subsection.

8 Subsection 9(2)

Repeal the subsection, substitute:

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

9 Section 30

Omit:

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.)

substitute:

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 3 of Part 4 of the Regulatory Powers Act has rules about bringing civil proceedings and criminal proceedings.)

10 Subsections 31(5) and 32(6) (notes)

Omit “section 98”, substitute “section 94 of the Regulatory Powers Act”.

11 Subsection 32(7)

Repeal the subsection.

12 Subsections 33(5), 34(5) and 35(5) (notes)

Omit “section 98”, substitute “section 94 of the Regulatory Powers Act”.

13 Subsection 35(6)

Repeal the subsection.

14 Subsections 36(6), 37(4) and 38(5) (notes)

Omit “section 98”, substitute “section 94 of the Regulatory Powers Act”.

15 Subsection 38(6)

Repeal the subsection.

16 Subsections 39(4), 40(5) and 41(6) (notes)

Omit “section 98”, substitute “section 94 of the Regulatory Powers Act”.

17 Subsection 41(7)

Repeal the subsection.

18 Subsections 42(5), 43(5), 44(5), 45(5), 46(6), 47(5) and 48(6) (notes)

Omit “section 98”, substitute “section 94 of the Regulatory Powers Act”.

19 Subsection 48(7)

Repeal the subsection.

20 Subsection 49(1)

Omit “(1) Subsection”, substitute “Subsection”.

21 Subsection 49(2)

Repeal the subsection.

22 Section 51

Repeal the section, substitute:

51 Simplified outline

The following is a simplified outline of this Chapter:

This Chapter applies the Regulatory Powers Act to enable authorised officers to enter premises and exercise investigation powers to determine whether there has been a contravention of any

of the provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

An authorised officer exercising investigation powers may be assisted by other persons if that assistance is necessary and reasonable.

An authorised officer can require information or documents to be produced under Part 3 of this Chapter.

Authorised officers are appointed by the Secretary.

23 Part 2 of Chapter 4

Repeal the Part, substitute:

Part 2—Investigation powers

52 Investigation powers

Provisions subject to investigation

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
 - (a) an offence against this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Related provisions

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

Authorised applicant and authorised person

(3) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(4) For the purposes of Part 3 of the Regulatory Powers Act, a person is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1) if:

- (a) the person is:
 - (i) a Judge of a court created by the Parliament; or
 - (ii) a Deputy President of the Administrative Appeals Tribunal; or
 - (iii) a non-presidential member of the Administrative Appeals Tribunal who is enrolled as a legal practitioner of the High Court, or the Supreme Court of a State or Territory, and has been so enrolled for at least 5 years; and
- (b) the person has consented to exercise powers conferred by that Part in relation to evidential material that relates to a provision mentioned in subsection (1); and
- (c) the Attorney-General has, by writing, nominated the person to exercise those powers.

(5) An issuing officer who is a Deputy President or non-presidential member of the Administrative Appeals Tribunal exercising a power conferred by Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), has the same protection and immunity as a Justice of the High Court.

Note: Subsection 75(3) of the Regulatory Powers Act confers protection and immunity on a judge exercising the powers of an issuing officer.

Relevant chief executive

(6) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

- (7) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).
- (8) In exercising powers or functions delegated under subsection (7), the delegate must comply with any directions of the Secretary.

Relevant court

- (9) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia.

Additional investigation powers

- (10) The additional power mentioned in subsection (11) is taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1).
- (11) The additional investigation power is the power to take samples of evidential material on premises entered under section 48 of the Regulatory Powers Act as that section applies in relation to evidential material that relates to a provision mentioned in subsection (1).

Use of force in executing a warrant

- (12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
 - (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

Person assisting

(13) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Self-incrimination

(14) Despite section 47 of the Regulatory Powers Act, a person is not excused from giving information, producing a document or answering a question under subsection 54(3) of the Regulatory Powers Act, as Part 3 of that Act applies in relation to this Act, 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.

(15) 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.

Extension to external Territories

(16) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

24 Subsection 80(2) (note)

Repeal the note.

25 At the end of Part 3 of Chapter 4

Add:

80A Self-incrimination

- (1) A person is not excused from giving information, producing a document or answering a question under subsection 80(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.

26 Part 4 of Chapter 4 (heading)

Repeal the heading, substitute:

Part 4—Authorised officers

27 Sections 82 and 83

Repeal the sections.

28 Section 84

Repeal the section, substitute:

84 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter provides for civil penalty orders for contraventions of civil penalty provisions and for infringement notices.
- A civil penalty provision is enforceable under Part 4 of the Regulatory Powers Act (see section 85).

- A civil penalty order may be sought from the Federal Court of Australia for the contravention of a civil penalty provision.
- A strict liability offence is subject to an infringement notice under Part 5 of the Regulatory Powers Act (see section 86).
- A person can be given an infringement notice for an alleged contravention of a strict liability offence. The person can choose to pay an amount as an alternative to proceedings being brought against the person in relation to the alleged contravention. However, if the person chooses not to do so, proceedings can be brought against the person in relation to the alleged contravention.

29 Parts 2 and 3 of Chapter 5

Repeal the Parts, substitute:

Part 2—Civil penalties and infringement notices

85 Civil penalty provisions

Enforceable civil penalty provisions

(1) Each civil penalty provision in this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the Secretary is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:

- (a) the Federal Court of Australia;
- (b) the Federal Circuit Court of Australia.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions in this Act, extends to every external Territory.

Liability of Crown

- (5) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions in this Act, does not make the Crown liable to be subject to civil proceedings for a contravention of a civil penalty provision.

86 Infringement notices

Provisions subject to an infringement notice

- (1) A strict liability offence against Chapter 3 is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an authorised officer is an infringement officer in relation to the offences mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the offences mentioned in subsection (1).
- (4) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive officer in relation to the provisions mentioned in subsection (1).
- (5) In exercising powers or functions delegated under subsection (4), the delegate must comply with any directions of the Secretary.

Extension to external Territories

(6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the offences mentioned in subsection (1), extends to every external Territory.

Liability of Crown

(7) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the offences mentioned in subsection (1), does not make the Crown liable to be given an infringement notice.

Part 2—Application and saving provisions

30 Saving provision—identity cards

Despite the repeal of section 82 of the *Tobacco Plain Packaging Act 2011* made by this Schedule, that section, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to a person who ceased to be an authorised officer before that commencement.

31 Application and saving provision—investigation

- (1) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Part 2 of Chapter 4 of the *Tobacco Plain Packaging Act 2011*, applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of the *Tobacco Plain Packaging Act 2011*, if the suspected contravention of the provision occurred before, on or after the commencement of this Schedule.
- (2) Chapter 4 of the *Tobacco Plain Packaging Act 2011*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to the following:
 - (a) an application for a warrant made, but not decided, under subsection 75(1) of that Act before the commencement of this Schedule;
 - (b) a warrant issued under subsection 75(2) of that Act, or completed and signed under subsection 76(4) of that Act before, on or after the commencement of this Schedule as a result of an application made before that day;
 - (c) powers exercised, rights created and duties imposed, under Part 2 of Chapter 4 of that Act before, on or after the commencement of this Schedule in relation to:
 - (i) an entry onto premises before that commencement with the consent of the occupiers of the premises; or
 - (ii) an entry onto premises before, on or after that commencement as a result of a warrant referred to in paragraph (b); or
 - (iii) things secured or seized under Division 1 or 3 of Part 2 of Chapter 4 before the commencement of this Schedule; or

- (iv) a requirement made under subsection 58(2) of that Act before the commencement of this Schedule.

32 Application and saving provision—civil penalties

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 85 of the *Tobacco Plain Packaging Act 2011*, applies in relation to contraventions of civil penalty provisions occurring on or after the commencement of this Schedule.
- (2) Part 2 of Chapter 5 of the *Tobacco Plain Packaging Act 2011*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to contraventions of civil penalty provisions occurring before the commencement of this Schedule.

33 Application and saving provision—infringement notices

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 86 of the *Tobacco Plain Packaging Act 2011*, applies in relation to alleged contraventions of provisions mentioned in subsection 86(1) of the *Tobacco Plain Packaging Act 2011* occurring on or after the commencement of this Schedule.
- (2) Part 3 of Chapter 5 of the *Tobacco Plain Packaging Act 2011*, as in force immediately before the commencement of this Schedule, continues to apply on and after that commencement in relation to alleged contraventions of strict liability offence provisions occurring before the commencement of this Schedule.

Schedule 15—Amendment of the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995

Part 1—Amendments

Weapons of Mass Destruction (Prevention of Proliferation) Act 1995

1 Section 3

Insert:

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

2 Section 16

Repeal the section, substitute:

16 Injunctions

Enforceable provisions

- (1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is an offence against this Act.

Note 1: The expression ***offence against this Act*** has an extended meaning (see section 3).

Note 2: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Minister is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Minister may, in writing, delegate the Minister's powers and functions as an authorised person to an officer of the Department in relation to the provisions mentioned in subsection (1).

Schedule 15 Amendment of the Weapons of Mass Destruction (Prevention of Proliferation) Act 1995

Part 1 Amendments

Relevant court

(4) For the purposes of Part 7 of the Regulatory Powers Act, the Federal Court of Australia is a relevant court in relation to the provisions mentioned in subsection (1).

Extension to external Territories

(5) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Part 2—Application and saving provision

3 Application and saving provision— injunctions

- (1) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 16 of the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*, applies in relation to contraventions occurring on or after the commencement of this Schedule.
- (2) Section 16 of the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*, as in force immediately before the commencement of this Schedule, applies on and after that commencement in relation to contraventions occurring before the commencement of this Schedule.

*[Minister's second reading speech made in—
Senate on 12 October 2016
House of Representatives on 24 October 2017]*

(153/16)