2022‑2023

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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| **EXPOSURE DRAFT (31/05/2023)** |

Public Health (Tobacco and Other Products) Bill 2023

No. , 2023

(Health and Aged Care)

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

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

The Parliament of Australia enacts:

Chapter 1—Preliminary

Part 1.1—Introduction

1 Short title

This Act is the *Public Health (Tobacco and Other Products) Act 2023*.

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 and 2 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Sections 3 to 186 | A single day to be fixed by Proclamation.  However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |  |

Note: This table relates only to the provisions of this Act as originally enacted.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 Objects of this Act

Objects of Act

(1) The objects of this Act are:

(a) to improve public health by discouraging smoking and the use of regulated tobacco items; and

(b) to give effect to certain obligations that Australia has as a party to the Convention on Tobacco Control; and

(c) to address the health risks posed by vaping and the use of e‑cigarette products.

Means for achieving objects

(2) The means for achieving the objects of this Act are the following:

(a) limiting the exposure of the public to communications, recommendations or actions that may persuade people to:

(i) start smoking or continue smoking; or

(ii) start vaping or continue vaping;

(b) reducing the appeal of regulated tobacco items and e‑cigarette products to consumers;

(c) preventing the retail packaging of tobacco products from misleading or deceiving consumers about the harmful effects of smoking or using tobacco products;

(d) increasing consumer knowledge of health effects relating to the use of tobacco products;

(e) increasing the effectiveness of health warnings on, and health promotion messages in, the retail packaging of tobacco products;

(f) discouraging people who have given up smoking or vaping from relapsing;

(g) preventing and reducing nicotine addiction;

(h) reducing people’s exposure to smoke from tobacco products;

(i) reducing the environmental risks of tobacco products;

(j) limiting novel developments and emerging innovation in tobacco products;

(k) limiting the risk of e‑cigarette products becoming a gateway into smoking and the use of regulated tobacco items;

(l) increasing public knowledge about tobacco products and the tobacco industry.

4 Simplified outline of this Act

This Act is about regulating the advertising and presentation of tobacco and e‑cigarette products in order to discourage the use of such products and protect and improve public health.

One of the main objects of this Act is to give effect to obligations that Australia has under the WHO Framework Convention on Tobacco Control. This is done in part by prohibiting the advertising of tobacco products, as well as by prohibiting persons from making tobacco sponsorships.

In order to limit the risk of e‑cigarette products becoming a gateway into smoking, and to address the health risks of vaping, this Act includes similar prohibitions in relation to e‑cigarette products.

This Act also specifies a number of requirements that tobacco products must comply with, including requirements and limitations relating to plain packaging, health warnings and the terms that can be included on tobacco product packaging.

A permanent ban on some tobacco products is included as well.

Certain persons are subject to obligations under this Act to report to the Secretary on a variety of matters including the ingredients used in tobacco products, volumes of sales and imports and research and development. The Minister may then publish those reports or parts of those reports.

A range of compliance and enforcement powers are provided for, including by applying the *Regulatory Powers (Standard Provisions) Act 2014.*

Various miscellaneous matters are also dealt with by this Act, including providing for cost recovery and the power to make delegations and regulations.

5 Application of this Act

(1) This Act extends to the external Territories.

(2) This Act extends to acts, omissions, matters and things outside Australia.

6 Act binds the Crown

(1) This Act binds the Crown in each of its capacities.

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

7 Operation of State and Territory laws

Concurrent operation of State and Territory laws

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

(2) Without limiting subsection (1), this Act does not exclude or limit the concurrent operation of a law of a State or Territory to the extent that:

(a) the law makes an act or omission:

(i) an offence; or

(ii) subject to a civil penalty; and

(b) that (or any similar) act or omission is also:

(i) an offence against this Act; or

(ii) subject to a civil penalty under this Act.

(3) To avoid doubt, subsection (2) applies even if the law of the State or Territory does any one or more of the following in relation to the offence or civil penalty:

(a) provides for a penalty that differs from the penalty provided in this Act;

(b) provides for fault elements that differ from the fault elements applicable to the offence against this Act;

(c) provides for defences or exceptions that differ from the defences or exceptions applicable to the offence against, or civil penalty provision of, this Act.

No doubling‑up of liabilities

(4) If:

(a) an act or omission is an offence against this Act and is also an offence against a law of a State or Territory; and

(b) the offender has been punished for the offence under the law of the State or Territory;

the offender is not liable to be punished for the offence under this Act.

(5) If a person has paid, or been ordered to pay, a civil penalty under a law of a State or Territory, the person is not liable to a civil penalty under this Act in respect of the same conduct.

Part 1.2—Interpretation

Division 1—General definitions

8 Definitions

In this Act:

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian Consumer Law*** means Schedule 2 to the *Competition and Consumer Act 2010* as applied under Subdivision A of Division 2 of Part XI of that Act.

***Australian hosting service provider*** has the same meaning as in the *Online Safety Act 2021*.

***authorised officer*** means a person appointed as an authorised officer under subsection 150(1).

***brand name***, in relation to a tobacco product, means the name under which the tobacco product is sold or supplied, or offered for sale or supply.

Note: A brand name must not be or include a prohibited term (see section 84).

***carriage service provider*** has the same meaning as in the *Telecommunications Act 1997*.

***carrier*** has the same meaning as in the *Telecommunications Act 1997*.

***cigar*** means a roll of cut tobacco for smoking that is enclosed in tobacco leaf or the leaf of another plant.

***cigarette*** means a roll of cut tobacco for smoking that is enclosed in paper.

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

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

***constitutionally covered entity*** means each of the following:

(a) the Commonwealth;

(b) a corporate Commonwealth entity or a Commonwealth company (both within the meaning of the *Public Governance, Performance and Accountability Act 2013*);

(c) a constitutional corporation;

(d) a foreign entity that is not a constitutional corporation;

(e) a body corporate that is incorporated in a Territory.

***constitutional trade or commerce*** means trade or commerce:

(a) between Australia and a place outside Australia; or

(b) among the States; or

(c) between a State and a Territory; or

(d) between 2 Territories; or

(e) within a Territory.

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

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

Note: The Convention is in Australian Treaty Series 2005 No. 7 ([2005] ATS 7) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

***Designs Act*** means the *Designs Act 2003*.

***e‑cigarette***: see section 11.

Note: An e‑cigarette that contains tobacco is not treated as a tobacco product under this Act (see subsection 9(4)).

***e‑cigarette accessory***: see section 12.

***e‑cigarette advertisement***: see section 42.

***e‑cigarette product*** means an e‑cigarette or an e‑cigarette accessory.

***e‑cigarette sponsorship***: see section 65.

***engage in conduct*** means:

(a) do an act; or

(b) omit to do an act.

***foreign entity*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***health promotion insert*** has the meaning given by the regulations.

***health warning*** has the meaning given by the regulations.

***insert*** means any thing (other than a tobacco product or the lining of a cigarette pack) placed inside the retail packaging of a tobacco product.

Note: For requirements applying to the lining of a cigarette pack, see the following:

(a) section 73 (about the physical features of the retail packaging of tobacco products);

(b) section 74 (about the colour and finish of the retail packaging of tobacco products).

***internet service provider*** has the same meaning as in the *Online Safety Act 2021*.

***late payment fee***: see subsection 175(1).

***mandatory marking*** has the meaning given by the regulations.

***mark****:*

(a) includes (without limitation) any line, letters, numbers, symbol, ideograph, colour, graphic or image; but

(b) does not include a trade mark (other than when expressly referring to a trade mark).

***offer***: the meaning of ***offer***, in relation to the sale or supply of a regulated tobacco item or an e‑cigarette product, is affected by section 15.

***onsert*** means any thing (other than the lining of a cigarette pack) that is affixed or otherwise attached to the retail packaging of a tobacco product.

Example: A sound chip embedded in the cardboard of a cigarette pack is an onsert.

***packages***: for when a person ***packages*** a tobacco product for retail sale, see section 71.

***periodical*** means an issue (however described and however published) of a newspaper, magazine, journal, newsletter or other similar publication, issues of which are published at regular or irregular intervals.

***person*** has a meaning affected by:

(a) section 169 (which deals with partnerships); and

(b) section 170 (which deals with unincorporated associations); and

(c) section 171 (which deals with trusts).

***prohibited ingredient***, in relation to a tobacco product, means an ingredient prohibited under subsection 86(1).

***prohibited term***, in relation to regulated tobacco items: see section 72.

***publish***:

(a) a tobacco advertisement—see section 29; and

(b) an e‑cigarette advertisement—see section 55.

***regulated tobacco item*** means a tobacco product or a tobacco product accessory.

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

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***reporting entity***: see section 129.

***retail packaging***: for ***retail packaging*** of a tobacco product, see section 70.

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

***shisha tobacco product*** means a tobacco product that contains molasses as a significant proportion of the product’s ingredients.

***smoking*** means smoking tobacco products.

***Therapeutic Goods Act*** means the *Therapeutic Goods Act 1989* and includes any instruments made under that Act.

***this Act*** includes the regulations made under this Act.

***tobacco advertisement***: see section 19.

***tobacco product***: see section 9.

***tobacco product accessory***: see section 10.

***tobacco product requirement*** means any of the following requirements in relation to regulated tobacco items:

(a) a requirement specified in Part 3.3;

(b) a requirement prescribed by regulations made under, or for the purposes of, a provision in Part 3.3;

(c) a requirement prescribed by regulations made for the purposes of subsection 123(1).

***tobacco sponsorship***: see section 38.

***Trade Marks Act*** means the *Trade Marks Act 1995*.

***vaping*** means inhaling the aerosol or vapour generated or released by an e‑cigarette product.

***variant name***, in relation to a tobacco product, means the name used to distinguish, by reference to one or more characteristics, that kind of tobacco product from other tobacco products supplied under the same brand name.

Note: A variant name must not be or include a prohibited term (see section 84).

Division 2—Key concepts for this Act

9 Meaning of *tobacco product*

Basic definition

(1) A ***tobacco product*** means the following designed or intended for human consumption or use:

(a) processed tobacco in any form;

(b) a product that contains tobacco as an ingredient.

Note 1: Loose tobacco for roll‑your‑own cigarettes is an example of processed tobacco. A cigar or cigarette is an example of a product that contains tobacco as an ingredient.

Note 2: An e‑cigarette product that contains tobacco is not treated as a tobacco product under this Act (see subsection (4)).

Note 3: Tobacco products and tobacco product accessories are together called ***regulated tobacco items*** (see definition in section 8).

(2) To avoid doubt, a ***tobacco product*** includes those parts of the product that are not tobacco.

Example: A tobacco product that is a cigarette includes the paper, and any filter tip, in the manufactured product.

(3) A ***tobacco product*** does not include a wrapper for tobacco that is in the form of a sheet or tube made from or with tobacco.

Note: Such wrappers are treated as tobacco product accessories (see paragraph 10(1)(d)).

E‑cigarette products excluded

(4) A ***tobacco product*** does not include an e‑cigarette product (even if the e‑cigarette product contains tobacco).

Certain therapeutic goods excluded

(5) A ***tobacco product*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

10 Meaning of *tobacco product accessory*

Basic definition

(1) A ***tobacco product accessory*** means any of the following:

(a) a cigarette paper (including a pre‑rolled cigarette paper) that is not part of a tobacco product;

(b) a cigarette roller;

(c) a filter tip for a cigar or cigarette that is not part of a tobacco product;

(d) a wrapper for tobacco that is in the form of a sheet or tube made from or with tobacco;

(e) a card, capsule, bead or other device that is capable of altering the flavour, smell or intensity of a tobacco product (except such a device that is part of a tobacco product);

(f) a tobacco pipe or water pipe that can be used for smoking processed tobacco.

Note 1: Tobacco product accessories and tobacco products are together called ***regulated tobacco items*** (see definition in section 8).

Note 2: The wrappers mentioned in paragraph (d) are sometimes called ‘blunts’ or ‘blunt wraps’.

Note 3: Water pipes covered by paragraph (f) include hookahs, narghiles, hubble bubbles and bongs.

Tobacco product accessories may be prescribed

(2) The regulations may prescribe a kind of item to be a ***tobacco product accessory*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied:

(a) that the item is designed or intended for use with or for the human consumption or use of tobacco products; and

(b) that making the proposed regulations will advance either or both of the following objects of this Act:

(i) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(ii) giving effect to Australia’s obligations under the Convention on Tobacco Control (see paragraph 3(1)(b)).

E‑cigarette products excluded

(4) A ***tobacco product accessory*** does not include an e‑cigarette product (even if the e‑cigarette product contains tobacco).

Certain therapeutic goods excluded

(5) A ***tobacco product accessory*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

11 Meaning of *e‑cigarette*

Basic definition

(1) An ***e‑cigarette*** means a device (whether or not containing nicotine or tobacco) that is designed or intended to generate or release, by electronic means, an aerosol or vapour for inhalation by its user in a way that replicates, or produces an experience similar to, smoking.

Note: Examples of e‑cigarettes include e‑cigars, e‑hookah pens, e‑pens, e‑pipes and vapes.

E‑cigarettes may be prescribed

(2) The regulations may prescribe a kind of item to be an ***e‑cigarette*** forthe purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied:

(a) that it is appropriate to do so; and

(b) that making the proposed regulations will advance either or both of the following objects of this Act:

(i) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(ii) addressing the health risks posed by vaping and the use of e‑cigarette products (see paragraph 3(1)(c)).

Certain therapeutic goods excluded

(4) An ***e‑cigarette*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

12 Meaning of *e‑cigarette accessory*

Basic definition

(1) An ***e‑cigarette accessory*** means any of the following:

(a) a cartridge, capsule or other vessel designed or intended to contain a liquid, gas, aerosol, vapour or other substance for use in an e‑cigarette;

(b) such a liquid, gas, aerosol, vapour or other substance (whether or not containing nicotine or tobacco);

(c) a heating element designed or intended for use in an e‑cigarette;

(d) a battery specifically designed or intended for use in an e‑cigarette.

E‑cigarette accessories may be prescribed

(2) The regulations may prescribe a kind of item to be an ***e‑cigarette accessory*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied:

(a) that the item is designed or intended for use with or for the human consumption or use of e‑cigarette products; and

(b) that making the proposed regulations will advance either or both of the following objects of this Act:

(i) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(ii) addressing the health risks posed by vaping and the use of e‑cigarette products (see paragraph 3(1)(c)).

Certain registered therapeutic goods excluded

(4) An ***e‑cigarette accessory*** does not include a product that is entered on the Australian Register of Therapeutic Goods maintained under the Therapeutic Goods Act.

Division 3—Other interpretation provisions

13 References to different kinds of tobacco products

(1) In this Act, tobacco products are of a different kind if they are sold or supplied under:

(a) different brand names; or

(b) different variant names.

(2) A tobacco product that is intended to be consumed or used in a particular way may be treated as a different kind of tobacco product to the same product intended to be used or consumed in another way.

Example: A loose processed tobacco product intended for use in a pipe may be treated as a different kind of tobacco product to loose processed tobacco intended for use in roll‑your‑own cigarettes.

14 References to manufacturers, importers, distributors and retailers

In this Act, a reference to a manufacturer, importer, distributor or retailer of regulated tobacco items or e‑cigarette products includes a reference to a person who manufactures, imports, distributes or sells a range of products, only some of which are regulated tobacco items or e‑cigarette products.

15 References to an *offer* to sell or supply

A reference in this Act to an ***offer*** to sell or supply a regulated tobacco item or an e‑cigarette product includes (without limitation) a reference to:

(a) offering the item or product for sale or supply on the internet or from physical premises; and

(b) exposing, displaying or advertising the item or product for sale or supply; and

(c) making the item or product available for sale or supply even if it is not visible to the public.

16 Tobacco products—rebuttable presumption of offer for retail sale

For the purposes of this Act, unless the contrary is proved, a tobacco product is presumed to be offered for retail sale if:

(a) an amount of the tobacco product is on physical premises from which regulated tobacco items are sold by way of retail sale; and

(b) the amount exceeds the amount (if any) prescribed by regulations made for the purposes of this paragraph.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

Chapter 2—Advertising and sponsorship prohibitions

Part 2.1—Introduction

17 Simplified outline of this Chapter

This Chapter sets out a general prohibition on advertising and sponsorship for regulated tobacco items and includes equivalent prohibitions for e‑cigarette products. A person who contravenes these prohibitions may commit an offence or be liable for a civil penalty.

In addition to setting out the general prohibitions, this Chapter defines the following key concepts:

(a) tobacco advertisement;

(b) tobacco sponsorship;

(c) e‑cigarette advertisement;

(d) e‑cigarette sponsorship.

It also defines how a person publishes an advertisement for the purposes of this Act.

In defining these concepts, this Chapter provides for some exceptions to things that might otherwise be captured. For example, communications that involve government or political matters, or the publication in certain circumstances of material relating to a news or current affairs report, are expressly stated not to be tobacco advertisements or e‑cigarette advertisements.

Similarly, there are exceptions as to what constitutes a tobacco or e‑cigarette sponsorship, including to permit the making of political donations.

This Chapter also permits the publication of tobacco and e‑cigarette advertisements in certain, limited circumstances.

Part 2.2—Prohibition of tobacco advertisements

Division 1—Offence and civil penalty

18 Prohibition on publishing tobacco advertisements

(1) A person contravenes this subsection if:

(a) the person publishes material, or authorises or causes material to be published; and

(b) the material is a tobacco advertisement.

Note 1: The physical elements of offences against subsections (3) and (6) are set out in this subsection (see section 165).

Note 2: For tobacco advertisement exceptions, see Division 3.

Exception for permitted publications

(2) Subsection (1) does not apply to the publication of a tobacco advertisement if the publication is permitted by a provision in Division 5.

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

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(4) The fault element for paragraph (1)(b) is recklessness.

Geographical application

(5) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (3).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Defence for individual publication

(8) It is a defence in a prosecution for an offence, or in proceedings for a civil penalty, for a contravention of subsection (1) if the defendant proves that:

(a) the defendant published the tobacco advertisement:

(i) as an individual; and

(ii) on the defendant’s own initiative; and

(b) the publication was not in the course of, or in any way associated with, the manufacture, importation, distribution or sale of regulated tobacco items by any person; and

(c) the defendant did not receive any direct or indirect benefit (whether financial or not) from any person for publishing the advertisement.

Note: A defendant bears a legal burden in relation to the matters in this subsection in a prosecution for an offence (see section 13.4 of the *Criminal Code*). The same applies in proceedings for a civil penalty.

Division 2—Meaning of tobacco advertisement

19 Meaning of *tobacco advertisement*

Basic definition

(1) A ***tobacco advertisement*** means any form of communication, recommendation or action with the aim, effect or likely effect of promoting the following, whether directly or indirectly:

(a) smoking;

(b) a regulated tobacco item or the use of such an item.

Tobacco advertisements—elements

(2) A tobacco advertisement may comprise any means, or combination of means, of communication, recommendation or action (whether visual, aural or otherwise).

Tobacco advertisements—additional purposes or effects

(3) In determining whether material is a tobacco advertisement, disregard whether or not the material has an aim or effect in addition to promoting the matters mentioned in subsection (1).

Tobacco advertisements—rebuttable presumption

(4) Material that is or contains any of the following is presumed to promote smoking, or a regulated tobacco item or the use of such an item, unless the contrary is proved:

(a) a trade mark that is registered under the Trade Marks Act in respect of goods that are or include regulated tobacco items;

(b) a design that is registered under the Designs Act in relation to products that are or include regulated tobacco items;

(c) a trade mark, design, colour, logo, get‑up or work (within the meaning of the *Copyright Act 1968*) that is evocative of, or closely associated with, a registered trade mark or design that is used, or has been used by any person at any time, in relation to regulated tobacco items;

(d) a prohibited term in relation to regulated tobacco items.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4 of the *Criminal Code*).

Tobacco advertisements—names of tobacco manufacturers, importers etc.

(5) Promoting the whole or a part of the name of a person constitutes a tobacco advertisement if:

(a) the person is a manufacturer, importer, distributor or retailer of regulated tobacco items; and

(b) the person’s name appears on a tobacco product, or on the retail packaging of a tobacco product.

Note: The use of the name of a person mentioned in this subsection does not constitute a tobacco advertisement in certain circumstances (see Division 3).

Tobacco advertisements may be prescribed

(6) The regulations may prescribe a kind of material to be a ***tobacco advertisement*** for the purposes of this Act.

(7) Before regulations are made under subsection (6), the Minister must be satisfied:

(a) that it is appropriate to do so; and

(b) that making the proposed regulations will advance either or both of the following objects of this Act:

(i) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(ii) giving effect to Australia’s obligations under the Convention on Tobacco Control (see paragraph 3(1)(b)); and

(c) that making the proposed regulations would not be inconsistent with Division 3 (about exceptions to tobacco advertisements).

Division 3—Tobacco advertisements—exceptions

20 Exception—labelling and packaging

(1) Writing and other marks that appear on a regulated tobacco item, or on the retail packaging of a tobacco product, do not, of themselves, constitute a tobacco advertisement.

(2) Subsection (1) applies only if the regulated tobacco item, or the retail packaging of the tobacco product, complies with the tobacco product requirements (whether in relation to the writing and other marks or otherwise).

(3) Despite subsection (1), a communication, recommendation or action in relation to the regulated tobacco item, or the retail packaging of the tobacco product, may constitute a tobacco advertisement.

21 Exception—standard business documents

(1) Writing and other marks that appear on a document prepared in the ordinary course of business of a manufacturer, importer, distributor or retailer of regulated tobacco items do not, of themselves, constitute a tobacco advertisement.

Note: Examples of such documents include orders, invoices, statements and documents relating to procurement and employment.

(2) Despite subsection (1), a communication, recommendation or action in relation to the document may constitute a tobacco advertisement.

22 Exception—business signage

(1) Business signage satisfying subsection (2) that appears in, on or near business premises occupied by a manufacturer, distributor, importer or retailer of regulated tobacco items does not, of itself, constitute a tobacco advertisement.

(2) Business signage satisfies this subsection if it does no more than state one or more of the following:

(a) the name and contact details of the manufacturer, distributor, importer or retailer that occupies the business premises;

(b) the nature of the business;

(c) the location of the business.

(3) Despite subsection (1), a communication, recommendation or action in relation to business signage may constitute a tobacco advertisement.

23 Exception—notice of availability of regulated tobacco items

A statement that regulated tobacco items, or that such items of a particular kind, are available from a manufacturer, importer, distributor or retailer does not, of itself, constitute a tobacco advertisement if the statement does not:

(a) use the brand name or variant name of any particular kind of tobacco product; or

(b) contain anything that would enable a particular regulated tobacco item, or a range of such items, to be identified.

24 Exception—consumer matters

None of the following communications, of themselves, constitute a tobacco advertisement:

(a) recalling a regulated tobacco item;

(b) disclosing a defect in, or a dangerous characteristic of, a regulated tobacco item;

(c) disclosing circumstances in which the use of a regulated tobacco item is or may be dangerous;

(d) disclosing procedures for the appropriate disposal of a regulated tobacco item;

(e) informing people about their consumer rights in relation to regulated tobacco items.

25 Exception—communications about government or political matters

(1) A communication does not constitute a tobacco advertisement to the extent that it is a communication about government or political matters.

(2) The use in such a communication of the whole name of a manufacturer, importer, distributor or retailer of regulated tobacco items does not, of itself, make the communication constitute a tobacco advertisement.

26 Exception—artistic works and public interest expression

None of the following constitutes a tobacco advertisement:

(a) the performance, exhibition or distribution, in good faith, of an artistic work;

(b) a communication made for any genuine academic, educational or scientific purpose or any other genuine purpose in the public interest.

27 Exception—journalism

The publication of material that is or relates to a news report, or a current affairs report, does not constitute a tobacco advertisement if:

(a) the public interest in the publication of the material outweighs any likely adverse effect of the publication on achieving the objects of this Act; and

(b) the publication is made by a person working in a professional capacity as a qualified journalist.

28 Exception—disclosures and acknowledgements by authors

Neither of the following statements made by an author of a work published, or intended for publication, in a periodical constitutes a tobacco advertisement:

(a) a statement made in the work to disclose the author’s conflict of interest in relation to the work;

(b) a statement made in the work that does no more than acknowledge a contribution made to the author in connection with the preparation of the work.

Note: Section 37 prohibits entering into a tobacco sponsorship.

Division 4—Meaning of publish a tobacco advertisement

29 Meaning of *publish* a tobacco advertisement

Basic definition

(1) A person ***publishes*** a tobacco advertisement if the person uses any means of communication to make the material comprising the advertisement, or the material containing the advertisement, available to, or accessible by, the public or a section of the public.

Tobacco advertisements included in things sold etc.

(2) Without limiting subsection (1), a tobacco advertisement is taken to be made available to, or accessible by, the public or a section of the public if the advertisement is included in something sold, or offered for sale or supply, to the public or a section of the public.

Targeted online advertising

(3) Without limiting subsection (1), a tobacco advertisement is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the advertisement is made available to, or accessible by, a person using the internet; and

(b) the advertisement is made available to that person because of:

(i) the use of an algorithm; or

(ii) the person’s online activity; or

(iii) any other characteristic of that person as an internet end user.

Private events or functions

(4) Without limiting subsection (1), a tobacco advertisement is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the advertisement is made available to, or accessible by, a person attending a private event or function to which access is restricted; and

(b) the purpose of the event or function is or includes the promotion of:

(i) smoking; or

(ii) a regulated tobacco item or the use of such an item; or

(iii) a manufacturer, importer, distributor or retailer of such an item.

(5) In determining whether a tobacco advertisement is made available to, or accessible by, the public or a section of the public at a private event or function, it is immaterial whether or not payment or other consideration is received from any person in relation to the event or function.

Division 5—Tobacco advertisements—permitted publications

30 Permitted publication—physical premises point of sale

Tobacco advertisements complying with State and Territory law

(1) A person may publish a tobacco advertisement if:

(a) the person displays the tobacco advertisement at physical premises where regulated tobacco items are offered for retail sale; and

(b) a law of the State or Territory in which the premises are located regulates the advertising of regulated tobacco items; and

(c) that law contains provisions expressly dealing with the display of advertisements for regulated tobacco items at or on premises where such items are offered for retail sale; and

(d) the display of the tobacco advertisement complies with those provisions; and

(e) the tobacco advertisement is not visible from outside the premises.

Particular physical premises

(2) Without limiting subsection (1), each of the following is taken to be physical premises for the purposes of that subsection:

(a) a kiosk, market stall or other place that has fixed boundaries, whether or not those boundaries have walls, where goods are offered for retail sale;

(b) a vending machine;

(c) a motor vehicle.

31 Permitted publication—online point of sale

Tobacco advertisements complying with State and Territory law

(1) A person may publish a tobacco advertisement if:

(a) the person makes the advertisement available on, or accessible using, the internet; and

(b) the advertisement is available to, or accessible by, the public, or a section of the public, in a State or Territory; and

(c) the advertisement enables a person accessing the advertisement to purchase a regulated tobacco item; and

(d) the publication of the tobacco advertisement is covered by subsection (2).

(2) The publication of a tobacco advertisement is covered by this subsection if:

(a) a law of the State or Territory regulates the advertising of regulated tobacco items on the internet; and

(b) that law contains provisions expressly dealing with the publication of tobacco advertisements on the internet that enable a person accessing the advertisement to purchase a regulated tobacco item; and

(c) the publication of the advertisement complies with those provisions.

Tobacco advertisements complying with Commonwealth regulations

(3) A person may publish a tobacco advertisement if:

(a) the person makes the advertisement available on, or accessible using, the internet; and

(b) the advertisement is available to, or accessible by, the public, or a section of the public, in a State or Territory; and

(c) the advertisement enables a person accessing the tobacco advertisement to purchase a regulated tobacco item; and

(d) either:

(i) there is no law of the State or Territory that regulates the advertising of regulated tobacco items on the internet; or

(ii) there is such a law, but it does not contain any provisions expressly dealing with the publication of tobacco advertisements on the internet that enable a person accessing the advertisement to purchase a regulated tobacco item; and

(e) the publication of the advertisement complies with the regulations (if any) made for the purposes of this paragraph.

(4) Regulations made for the purposes of paragraph (3)(e) may, without limitation, prescribe matters in relation to any of the following:

(a) the webpage, or the website, on which tobacco advertisements are displayed;

(b) the size, content, format and location of tobacco advertisements;

(c) without limiting paragraph (b)—the inclusion in or with tobacco advertisements of any of the following:

(i) health warnings;

(ii) health promotion inserts;

(iii) warnings about age restrictions on the retail sale of regulated tobacco items;

(iv) information about any fees, taxes and charges payable in relation to regulated tobacco items;

(d) age restricted access systems for access to tobacco advertisements.

32 Permitted publication—trade communications

(1) A person may publish a tobacco advertisement if the person makes the advertisement available to, or accessible by, a group of people all of whom are involved in the manufacture, importation, distribution or sale of regulated tobacco items.

(2) Subsection (1) applies only if:

(a) the tobacco advertisement is not available to, or accessible by, persons other than those involved in the manufacture, importation, distribution or sale of regulated tobacco items; and

(b) the advertisement does not, apart from the fact of the advertisement, actively promote smoking or the use of regulated tobacco items; and

(c) in a case where the advertisement relates to the sale or supply of a particular regulated tobacco item—the advertisement is limited to factual information about the item and the terms of the sale or supply of the item.

Note: Factual information about a regulated tobacco item includes brand or variant name, price, ingredients, availability and package sizing.

33 Permitted publication—telecommunications and online service providers

A person may publish a tobacco advertisement if:

(a) the person is a carrier and, in publishing the tobacco advertisement, the person is acting solely in the person’s capacity as a carrier; or

(b) the person is a carriage service provider and, in publishing the tobacco advertisement, the person is acting solely in the person’s capacity as a carriage service provider; or

(c) the person is an internet service provider and, in publishing the tobacco advertisement, the person is acting solely in the person’s capacity as an internet service provider; or

(d) the person is an Australian hosting service provider and, in publishing the tobacco advertisement, the person is acting solely in the person’s capacity as Australian hosting service provider.

34 Permitted publication—periodicals printed outside Australia

A person may publish a tobacco advertisement if:

(a) the advertisement is contained in a hard copy periodical printed outside Australia; and

(b) the periodical is not principally intended for distribution or use in Australia; and

(c) the conduct constituting publication of the advertisement consists of no more than selling or supplying, or offering to sell or supply, the periodical.

35 Permitted publication—compliance activities

A person may publish a tobacco advertisement if the publication is made to comply with:

(a) a request by, or a requirement of, an authorised officer in relation to administering or enforcing this Act (including exercising any function or power under the Regulatory Powers Act as it applies to this Act); or

(b) any other law of the Commonwealth or any law of a State or Territory.

36 Permitted publication—advertisements during aircraft flight

(1) A person may publish a tobacco advertisement if:

(a) the person is operating the flight of an aircraft; and

(b) the person publishes the advertisement in the aircraft during the flight.

(2) Subsection (1) does not apply if the flight begins at a place in Australia and is intended to end at another place in Australia.

(3) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

Part 2.3—Prohibition of tobacco sponsorships

Division 1—Offence and civil penalty

37 Prohibition on entering into tobacco sponsorships

(1) A person contravenes this subsection if:

(a) the person engages in any of the following conduct:

(i) entering into an arrangement, agreement or understanding with another person to make a contribution of any kind to any person;

(ii) making a promise or giving an undertaking to another person to make a contribution of any kind to any person; and

(b) the conduct constitutes a tobacco sponsorship.

Note: The physical elements of offences against subsections (2) and (5) are set out in this subsection (see section 165).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(3) The fault element for paragraph (1)(b) is recklessness.

Geographical application

(4) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (2).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Division 2—Meaning of tobacco sponsorship

38 Meaning of *tobacco sponsorship*

Basic definition

(1) A ***tobacco sponsorship*** means any form of contribution (whether financial or otherwise) to an event, activity or individual with the aim, effect or likely effect of promoting the following, whether directly or indirectly:

(a) smoking;

(b) a regulated tobacco item or the use of such an item.

Note: In some circumstances, a tobacco sponsorship may also constitute a tobacco advertisement.

Specific instances of tobacco sponsorship

(2) A ***tobacco sponsorship*** includes any arrangement, agreement, understanding, promise or undertaking to make a contribution mentioned in subsection (1), whether or not the arrangement, agreement, understanding, promise or undertaking:

(a) is in writing; or

(b) is express or implied; or

(c) is legally binding; or

(d) is publicly acknowledged.

Division 3—Tobacco sponsorships—exceptions

39 Exception—political donations and electoral expenditure

(1) A contribution of the following kind made to a person or entity covered by subsection (2) does not constitute a tobacco sponsorship:

(a) a gift;

(b) a payment or reimbursement of expenditure incurred during the course of an election.

(2) This subsection covers the following persons and entities:

(a) a member of the Parliament of the Commonwealth, the Parliament of a State or the Legislative Assembly of a Territory;

(b) a candidate for election to such a Parliament or Legislative Assembly;

(c) a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation;

(d) an entity that is associated with a person or entity mentioned in paragraphs (a) to (c);

(e) another person campaigning for or on behalf of a person or entity mentioned in paragraphs (a) to (c).

40 Exception—statements by authors

A statement made by an author of a work that is published, or intended for publication, in a periodical to disclose the author’s conflict of interest in relation to the work does not constitute a tobacco sponsorship.

Part 2.4—Prohibition of e‑cigarette advertisements

Division 1—Offence and civil penalty

41 Prohibition on publishing e‑cigarette advertisements

(1) A person contravenes this subsection if:

(a) the person publishes material, or authorises or causes material to be published; and

(b) the material is an e‑cigarette advertisement; and

(c) any of the following apply:

(i) the person is a constitutional corporation;

(ii) the person is a body corporate that is incorporated in a Territory;

(iii) the publication is made in the course of constitutional trade or commerce;

(iv) the publication is made using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution;

(v) the publication is made in a Territory.

Note 1: The physical elements of offences against subsections (3) and (6) are set out in this subsection (see section 165).

Note 2: For e‑cigarette advertisement exceptions, see Division 3.

Exception for permitted publications

(2) Subsection (1) does not apply to the publication of an e‑cigarette advertisement if the publication is permitted by a provision in Division 5.

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

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(4) For the purposes of subsection (3):

(a) recklessness is the fault element for paragraph (1)(b); and

(b) strict liability applies to paragraph (1)(c).

Geographical application

(5) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (3).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Defence for individual publication

(8) It is a defence in a prosecution for an offence, or in proceedings for a civil penalty, for a contravention of subsection (1) if the defendant proves that:

(a) the defendant published the e‑cigarette advertisement:

(i) as an individual; and

(ii) on the defendant’s own initiative; and

(b) the publication was not in the course of, or in any way associated with, the manufacture, importation, distribution or sale of e‑cigarette products by any person; and

(c) the defendant did not receive any direct or indirect benefit (whether financial or not) from any person for publishing the advertisement.

Note: A defendant bears a legal burden in relation to the matters in this subsection in a prosecution for an offence (see section 13.4 of the *Criminal Code*). The same applies in proceedings for a civil penalty.

Division 2—Meaning of e‑cigarette advertisement

42 Meaning of *e‑cigarette advertisement*

Basic definition

(1) An ***e‑cigarette advertisement*** means any form of communication, recommendation or action that has the aim, effect or likely effect of promoting the following, whether directly or indirectly:

(a) vaping;

(b) an e‑cigarette product or the use of such a product.

E‑cigarette advertisements may be prescribed

(2) The regulations may prescribe a kind of material to be an ***e‑cigarette advertisement*** forthe purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied:

(a) that it is appropriate to do so; and

(b) that making the proposed regulations will advance either or both of the following objects of this Act:

(i) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(ii) addressing the health risks posed by vaping and the use of e‑cigarette products (see paragraph 3(1)(c)); and

(c) that making the proposed regulations would not be inconsistent with Division 3 (about exceptions to e‑cigarette advertisements).

Division 3—E‑cigarette advertisements—exceptions

43 Exception—labelling and wrapping

(1) Writing and other marks that appear on an e‑cigarette product, or on the wrapping of an e‑cigarette product, do not, of themselves, constitute an e‑cigarette advertisement.

(2) Despite subsection (1), a communication, recommendation or action in relation to the e‑cigarette product, or the wrapping of the e‑cigarette product, may constitute an e‑cigarette advertisement.

44 Exception—standard business documents

(1) Writing and other marks that appear on a document prepared in the ordinary course of business of a manufacturer, importer, distributor or retailer of e‑cigarette products do not, of themselves, constitute an e‑cigarette advertisement.

Note: Examples of such documents include orders, invoices, statements and documents relating to procurement and employment.

(2) Despite subsection (1), a communication, recommendation or action in relation to the document may constitute an e‑cigarette advertisement.

45 Exception—business signage

(1) Business signage satisfying subsection (2) that appears in, on or near business premises occupied by a manufacturer, distributor, importer or retailer of e‑cigarette products does not, of itself, constitute an e‑cigarette advertisement.

(2) Business signage satisfies this subsection if it does no more than state one or more of the following:

(a) the name and contact details of the manufacturer, distributor, importer or retailer that occupies the business premises;

(b) the nature of the business;

(c) the location of the business.

(3) Despite subsection (1), a communication, recommendation or action in relation to business signage may constitute an e‑cigarette advertisement.

46 Exception—notice of availability of e‑cigarette products

A statement that e‑cigarette products, or that such products of a particular kind, are available from a manufacturer, importer, distributor or retailer does not, of itself, constitute an e‑cigarette advertisement if the statement does not:

(a) use the name of any particular e‑cigarette product or range of products; or

(b) contain anything that would enable a particular e‑cigarette product, or a range of such products, to be identified.

47 Exception—consumer matters

None of the following communications, of themselves, constitute an e‑cigarette advertisement:

(a) recalling an e‑cigarette product;

(b) disclosing a defect in, or a dangerous characteristic of, an e‑cigarette product;

(c) disclosing circumstances in which the use of an e‑cigarette product is or may be dangerous;

(d) disclosing procedures for the appropriate disposal of an e‑cigarette product;

(e) informing people about their consumer rights in relation to e‑cigarette products.

48 Exception—communications about government or political matters

(1) A communication does not constitute an e‑cigarette advertisement to the extent that it is a communication about government or political matters.

(2) The use in such a communication of the whole name of a manufacturer, importer, distributor or retailer of e‑cigarette products does not, of itself, make the communication constitute an e‑cigarette advertisement.

49 Exception—artistic works and public interest expression

None of the following constitutes an e‑cigarette advertisement:

(a) the performance, exhibition or distribution, in good faith, of an artistic work;

(b) a communication made for any genuine academic, educational or scientific purpose or any other genuine purpose in the public interest.

50 Exception—journalism

The publication of material that is or relates to a news report, or a current affairs report, does not constitute an e‑cigarette advertisement if:

(a) the public interest in the publication of the material outweighs any likely adverse effect of the publication on achieving the objects of this Act; and

(b) the publication is made by a person working in a professional capacity as a qualified journalist.

51 Exception—disclosures and acknowledgements by authors

Neither of the following statements made by an author of a work published, or intended for publication, in a periodical constitutes an e‑cigarette advertisement:

(a) a statement made in the work to disclose the author’s conflict of interest in relation to the work;

(b) a statement made in the work that does no more than acknowledge a contribution made to the author in connection with the preparation of the work.

Note: Section 64 prohibits entering into an e‑cigarette sponsorship.

52 Exception—exempt advertisements under the Therapeutic Goods Act

A communication that meets the following conditions does not constitute an e‑cigarette advertisement:

(a) the communication is an advertisement relating to an e‑cigarette product that is a therapeutic good within the meaning of the Therapeutic Goods Act;

(b) Part 5‑1 of that Act (about regulation of advertising etc. for therapeutic goods) does not apply to the advertisement because of section 42AA of that Act.

Note: Section 42AA of the Therapeutic Goods Act permits advertisements directed exclusively to certain health professionals.

53 Exception—approved use of restricted representations under the Therapeutic Goods Act

Scope

(1) Subsection (2) applies in relation to an e‑cigarette product if:

(a) the product is a therapeutic good within the meaning of the Therapeutic Goods Act; and

(b) there is in force, under section 42DF of that Act, an approval by the Secretary to use a restricted representation in relation to the product.

Exception

(2) An advertisement for the e‑cigarette product does not constitute an e‑cigarette advertisement to the extent that:

(a) the advertisement includes the use of the restricted representation; and

(b) use of the representation complies with any conditions imposed on the approval.

(3) Expressions used in this section that are defined for the purposes of the Therapeutic Goods Act have the same meaning in this section as they have in that Act.

54 Exception—permitted use of restricted or prohibited representations under the Therapeutic Goods Act

Scope

(1) Subsection (2) applies in relation to an e‑cigarette product if:

(a) the product is a therapeutic good within the meaning of the Therapeutic Goods Act; and

(b) the Secretary has granted permission, under section 42DK of that Act, to use one or more of the following in specified advertisements about the product:

(i) a specified restricted representation;

(ii) a specified prohibited representation;

(iii) another representation.

Exception

(2) An advertisement for the e‑cigarette product does not constitute an e‑cigarette advertisement to the extent that:

(a) the advertisement is of a kind specified in the permission; and

(b) the advertisement is or contains any of the following representations allowed by the permission:

(i) a specified restricted representation;

(ii) a specified prohibited representation;

(iii) another representation; and

(c) the advertisement complies with any conditions specified in the permission.

(3) Expressions used in this section that are defined for the purposes of the Therapeutic Goods Act have the same meaning in this section as they have in that Act.

Division 4—Meaning of publish an e‑cigarette advertisement

55 Meaning of *publish* an e‑cigarette advertisement

Basic definition

(1) A person ***publishes*** an e‑cigarette advertisement if the person uses any means of communication to make material comprising the advertisement, or material containing the advertisement, available to, or accessible by, the public or a section of the public.

E‑cigarette advertisements included in things sold etc.

(2) Without limiting subsection (1), an e‑cigarette advertisement is taken to be made available to, or accessible by, the public or a section of the public if the advertisement is included in something sold, or offered for sale or supply, to the public or a section of the public.

Targeted online advertising

(3) Without limiting subsection (1), an e‑cigarette advertisement is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the advertisement is made available to, or accessible by, a person using the internet; and

(b) the advertisement is made available to that person because of:

(i) the use of an algorithm; or

(ii) the person’s online activity; or

(iii) any other characteristic of that person as an internet end user.

Private events or functions

(4) Without limiting subsection (1), an e‑cigarette advertisement is taken to be made available to, or accessible by, the public or a section of the public if:

(a) the advertisement is made available to, or accessible by, a person attending a private event or function to which access is restricted; and

(b) the purpose of the event or function is or includes the promotion of:

(i) vaping; or

(ii) an e‑cigarette product or the use of such a product; or

(iii) a manufacturer, importer, distributor or retailer of such a product.

(5) In determining whether an e‑cigarette advertisement is made available to, or accessible by, the public or a section of the public at a private event or function, it is immaterial whether or not payment or other consideration is received from any person in relation to the event or function.

Division 5—E‑cigarette advertisements—permitted publications

56 Permitted publication—physical premises point of sale

E‑cigarette advertisements complying with State and Territory law

(1) A person may publish an e‑cigarette advertisement if:

(a) the person displays the e‑cigarette advertisement at physical premises where e‑cigarette products are offered for retail sale; and

(b) a law of the State or Territory in which the premises are located regulates the advertising of e‑cigarette products; and

(c) that law contains provisions expressly dealing with the display of advertisements for e‑cigarette products at or on premises where such items are offered for retail sale; and

(d) the display of the advertisement complies with those provisions; and

(e) the e‑cigarette advertisement is not visible from outside the premises.

Particular physical premises

(2) Without limiting subsection (1), each of the following is taken to be physical premises for the purposes of that subsection:

(a) a kiosk, market stall or other place that has fixed boundaries, whether or not those boundaries have walls, where goods are offered for retail sale;

(b) a vending machine;

(c) a motor vehicle.

E‑cigarette advertisements complying with Commonwealth regulations

(3) A person may publish an e‑cigarette advertisement if:

(a) the person displays the e‑cigarette advertisement at physical premises where e‑cigarette products are offered for retail sale; and

(b) either:

(i) there is no law of the State or Territory in which the premises are located that regulates the advertising of e‑cigarette products; or

(ii) there is such a law, but it does not contain any provisions expressly dealing with the display of advertisements for e‑cigarette products at or on such premises; and

(c) the display of the e‑cigarette advertisement complies with the requirements (if any) prescribed by regulations made for the purposes of this paragraph.

(4) Regulations made for the purposes of paragraph (3)(c) may, without limitation, prescribe requirements as to any of the following:

(a) the size, content, format and location of e‑cigarette advertisements;

(b) without limiting paragraph (a)—the inclusion in or with e‑cigarette advertisements of any of the following:

(i) warnings about the health consequences of using e‑cigarette products;

(ii) warnings about age restrictions on the retail sale of e‑cigarette products;

(iii) information about any fees, taxes and charges payable in relation to e‑cigarette products.

57 Permitted publication—online point of sale

E‑cigarette advertisements complying with State and Territory law

(1) A person may publish an e‑cigarette advertisement if:

(a) the person makes the advertisement available on, or accessible using, the internet; and

(b) the advertisement is available to, or accessible by, the public, or a section of the public, in a State or Territory; and

(c) the advertisement enables a person accessing the advertisement to purchase an e‑cigarette product; and

(d) the publication of the advertisement is covered by subsection (2).

(2) The publication of an e‑cigarette advertisement is covered by this subsection if:

(a) a law of the State or Territory regulates the advertising of e‑cigarette products on the internet; and

(b) that law contains provisions expressly dealing with the publication of e‑cigarette advertisements on the internet that enable a person accessing the advertisement to purchase an e‑cigarette product; and

(c) the publication of the advertisement complies with those provisions.

E‑cigarette advertisements complying with Commonwealth regulations

(3) A person may publish an e‑cigarette advertisement if:

(a) the person makes the advertisement available on, or accessible using, the internet; and

(b) the advertisement is accessible by the public, or a section of the public, in a State or Territory; and

(c) the advertisement enables a person accessing the e‑cigarette advertisement to purchase an e‑cigarette product; and

(d) either:

(i) there is no law of the State or Territory that regulates the advertising of e‑cigarette products on the internet; or

(ii) there is such a law, but it does not contain any provisions expressly dealing with the publication of e‑cigarette advertisements on the internet that enable a person accessing the advertisement to purchase an e‑cigarette product; and

(e) the publication of the advertisement complies with the regulations (if any) made for the purposes of this paragraph.

(4) Regulations made for the purposes of paragraph (3)(e) may, without limitation, prescribe matters in relation to any of the following:

(a) the webpage, or the website, on which e‑cigarette advertisements are displayed;

(b) the size, content, format and location of e‑cigarette advertisements;

(c) without limiting paragraph (b)—the inclusion in or with e‑cigarette advertisements of any of the following:

(i) warnings about the health consequences of using e‑cigarette products;

(ii) warnings about age restrictions on the retail sale of e‑cigarette products;

(iii) information about any fees, taxes and charges payable in relation to e‑cigarette products;

(d) age restricted access systems for access to e‑cigarette advertisements.

58 Permitted publication—trade communications

(1) A person may publish an e‑cigarette advertisement if the person makes the advertisement available to, or accessible by, a group of people all of whom are involved in the manufacture, importation, distribution or sale of e‑cigarette products.

(2) Subsection (1) applies only if:

(a) the e‑cigarette advertisement is not available to, or accessible by, persons other than those involved in the manufacture, importation, distribution or sale of e‑cigarette products; and

(b) the advertisement does not, apart from the fact of the advertisement, actively promote vaping or the use of e‑cigarette products; and

(c) in a case where the advertisement relates to the sale or supply of a particular e‑cigarette product—the advertisement is limited to factual information about the product and the terms of the sale or supply of the product.

Note: Factual information about an e‑cigarette product includes the name of the product, price, ingredients, availability and product sizing.

59 Permitted publication—telecommunications and online service providers

A person may publish an e‑cigarette advertisement if:

(a) the person is a carrier and, in publishing the e‑cigarette advertisement, the person is acting solely in the person’s capacity as a carrier; or

(b) the person is a carriage service provider and, in publishing the e‑cigarette advertisement, the person is acting solely in the person’s capacity as a carriage service provider; or

(c) the person is an internet service provider and, in publishing the e‑cigarette advertisement, the person is acting solely in the person’s capacity as an internet service provider; or

(d) the person is Australian hosting service provider and, in publishing the e‑cigarette advertisement, the person is acting solely in the person’s capacity as Australian hosting service provider.

60 Permitted publication—periodicals printed outside Australia

A person may publish an e‑cigarette advertisement if:

(a) the advertisement is contained in a hard copy periodical printed outside Australia; and

(b) the periodical is not principally intended for distribution or use in Australia; and

(c) the conduct constituting publication of the advertisement consists of no more than selling or supplying, or offering to sell or supply, the periodical.

61 Permitted publication—compliance activities

A person may publish an e‑cigarette advertisement if the publication is made to comply with:

(a) a request by, or a requirement of, an authorised officer in relation to administering or enforcing this Act (including exercising any function or power under the Regulatory Powers Act as it applies to this Act); or

(b) any other law of the Commonwealth or any law of a State or Territory.

62 Permitted publication—advertisements during aircraft flight

(1) A person may publish an e‑cigarette advertisement if:

(a) the person is operating the flight of an aircraft; and

(b) the person publishes the advertisement in the aircraft during the flight.

(2) Subsection (1) does not apply if the flight begins at a place in Australia and is intended to end at another place in Australia.

(3) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

63 Interaction of Division with Therapeutic Goods Act

Nothing in this Division constitutes, for the purposes of Part 5‑1 of the Therapeutic Goods Act, an authorisation or requirement by a government or government authority to make a reference to an e‑cigarette product that is a therapeutic good within the meaning of that Act.

Part 2.5—Prohibition of e‑cigarette sponsorships

Division 1—Offence and civil penalty

64 Prohibition on entering into e‑cigarette sponsorships

(1) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in any of the following conduct:

(i) entering into an arrangement, agreement or understanding with another person to make a contribution of any kind to any person;

(ii) making a promise or giving an undertaking to another person to make a contribution of any kind to any person; and

(b) the conduct constitutes an e‑cigarette sponsorship; and

(c) any of the following apply:

(i) the first person is a constitutional corporation;

(ii) the first person is a body corporate that is incorporated in a Territory;

(iii) the conduct takes place in the course of constitutional trade or commerce;

(iv) the conduct takes place in a Territory.

Note: The physical elements of offences against subsections (2) and (5) are set out in this subsection (see section 165).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(3) For the purposes of subsection (2):

(a) recklessness is the fault element for paragraph (1)(b); and

(b) strict liability applies to paragraph (1)(c).

Geographical application

(4) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (2).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Division 2—Meaning of e‑cigarette sponsorship

65 Meaning of *e‑cigarette sponsorship*

Basic definition

(1) An ***e‑cigarette sponsorship*** means any form of contribution (whether financial or otherwise) to an event, activity or individual with the aim, effect or likely effect of promoting the following, whether directly or indirectly:

(a) vaping;

(b) an e‑cigarette product or the use of such a product.

Note: In some circumstances, an e‑cigarette sponsorship may also constitute an e‑cigarette advertisement.

Specific instances of e‑cigarette sponsorship

(2) An ***e‑cigarette sponsorship*** includes any arrangement, agreement, understanding, promise or undertaking to make a contribution mentioned in subsection (1), whether or not the arrangement, agreement, understanding, promise or undertaking:

(a) is in writing; or

(b) is express or implied; or

(c) is legally binding; or

(d) is publicly acknowledged.

Division 3—E‑cigarette sponsorships—exceptions

66 Exception—political donations and electoral expenditure

(1) A contribution of the following kind made to a person or entity covered by subsection (2) does not constitute an e‑cigarette sponsorship:

(a) a gift;

(b) a payment or reimbursement of expenditure incurred during the course of an election.

(2) This subsection covers the following persons and entities:

(a) a member of the Parliament of the Commonwealth, the Parliament of a State or the Legislative Assembly of a Territory;

(b) a candidate for election to such a Parliament or Legislative Assembly;

(c) a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation;

(d) an entity that is associated with a person or entity mentioned in paragraphs (a) to (c);

(e) another person campaigning for or on behalf of a person or entity mentioned in paragraphs (a) to (c).

67 Exception—statements by authors

A statement made by an author of a work that is published, or intended for publication, in a periodical to disclose the author’s conflict of interest in relation to the work does not constitute an e‑cigarette sponsorship.

Part 2.6—Other matters

68 No action for failing to publish prohibited advertisement

No action of any kind lies in any court against a person for refusing or failing to publish a tobacco advertisement or an e‑cigarette advertisement if the publication is prohibited by this Act.

Chapter 3—Tobacco product requirements

Part 3.1—Introduction

69 Simplified outline of this Chapter

This Chapter imposes a variety of requirements in relation to tobacco products and tobacco product accessories. These requirements relate to things such as:

(a) the retail packaging of tobacco products; and

(b) prohibiting or limiting the use of certain words or characters in relation to regulated tobacco items; and

(c) the appearance and contents of tobacco products; and

(d) the standards that apply to tobacco products.

The requirements in relation to the retail packaging of tobacco products include providing that health warnings must be displayed on the retail packaging, and that there are restrictions on the colour and appearance of the packaging. This Chapter also prohibits tobacco products from containing certain ingredients or devices.

The detail of some of the requirements set out in this Chapter is set out in the regulations.

A person who contravenes a tobacco product requirement, including by selling or possessing tobacco products that do not comply with such a requirement, may commit an offence or be liable for a civil penalty.

This Chapter also provides that the regulations may prescribe additional requirements in relation to some matters.

Part 3.2—Key concepts—tobacco product requirements

70 Meaning of *retail packaging* of a tobacco product

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

(a) any container for retail sale in which the tobacco product is directly placed; or

(b) any container for retail sale that contains a smaller container in which the tobacco product is directly placed; or

(c) any plastic or other wrapper that covers a container mentioned in paragraph (a) or (b); or

(d) any plastic or other wrapper that covers the tobacco product when the product is offered for retail sale; or

(e) any insert that is placed inside the packaging of the tobacco product mentioned in any of paragraphs (a) to (d); or

(f) any onsert that is affixed or otherwise attached to the packaging of the tobacco product mentioned in any of paragraphs (a) to (d); or

(g) any lining of a container mentioned in paragraph (a).

Note 1: For ***container***, see section 8.

Note 2: For requirements applying to the lining of a cigarette pack, see the following:

(a) section 73 (about the physical features of the retail packaging of tobacco products);

(b) section 74 (about the colour and finish of the retail packaging of tobacco products).

71 Meaning of *packages* a tobacco product for retail sale

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

(a) the person places the tobacco product directly into a container for retail sale; or

(b) the person places a container, in which the tobacco product has been directly placed, into a larger container for retail sale; or

(c) the person covers the retail packaging of the tobacco product (within the meaning of paragraph (a) or (b) of the definition of ***retail packaging*** in section 70) with a plastic or other wrapper; or

(d) the person covers the tobacco product with a plastic or other wrapper for retail sale; or

(e) the person places an insert inside the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of the definition of ***retail packaging*** in section 70); or

(f) the person affixes or otherwise attaches an onsert to the retail packaging of the tobacco product (within the meaning of any of paragraphs (a) to (d) of the definition of ***retail packaging*** in section 70); or

(g) the person places a lining in a container mentioned in paragraph (a) in which the tobacco product is or will be directly placed.

Note 1: For ***container***, see section 8.

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

72 Meaning of *prohibited term*

(1) A term listed in column 1 of an item of the following table, examples of which are given in column 2 of the item, is a ***prohibited term*** in relation to regulated tobacco items.

| Prohibited terms—regulated tobacco items | | |
| --- | --- | --- |
| Item | Column 1  **Prohibited term** | Column 2  **Examples** |
| 1 | A term that implies reduced harm | Low tar, light, lite, mild, ultra‑light, ultra‑lite |
| 2 | A term that refers to quality | Extra, smooth, ultra |
| 3 | A colour | Black, blue, gold, red, white |
| 4 | A term that refers to a filter | Charcoal filter, firm filter, flo‑filter, recessed filter |
| 5 | A non‑alphabetical character (other than “&”), a numeral or an ideograph | !, #, $, ☺ |
| 6 | A term that refers to health effects | Organic, natural, additive‑free |
| 7 | A term that suggests the inclusion of a prohibited ingredient | Caffeine, menthol, vitamin |

Prohibited terms may be prescribed

(2) The regulations may prescribe a word or mark, in addition to those mentioned in subsection (1), to be a ***prohibited term*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied that the word or mark, if used in connection with a regulated tobacco item, would:

(a) be false, misleading, deceptive or likely to create an erroneous impression about the item’s characteristics, health effects, risks or emissions; or

(b) directly or indirectly create an impression that the item is less harmful than other regulated tobacco items.

(4) The prescription of a word or mark in the regulations as a ***prohibited term*** does not limit subsection (1).

Exceptions

(5) The name of a person who is a manufacturer, importer, distributor or retailer of regulated tobacco items is not a ***prohibited term***.

(6) A word or mark is not a ***prohibited term*** to the extent that the word or mark forms part of, and is used in, any of the following:

(a) a health warning;

(b) a health promotion insert;

(c) a mandatory marking.

Part 3.3—Tobacco product requirements

Division 1—Plain packaging requirements

73 Plain packaging—physical features

The physical features of the retail packaging of tobacco products must comply with the regulations (if any) prescribed for the purposes of this section.

74 Plain packaging—colour and finish

(1) The colour and finish of the retail packaging of tobacco products must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Default colour for retail packaging

(2) Subsections (3) and (4) apply if the regulations do not prescribe a colour for the following parts of the retail packaging of tobacco products:

(a) all outer surfaces and inner surfaces of the retail packaging of tobacco products (within the meaning of paragraph (a) or (b) of the definition of ***retail packaging*** in section 70);

(b) both sides of any lining of a cigarette pack.

(3) Those parts of the retail packaging of the tobacco products must be the colour known as Pantone 448C.

(4) The following are not required to be the colour known as Pantone 448C:

(a) health warnings;

(b) mandatory markings;

(c) the brand name or variant name of the tobacco product.

75 Plain packaging—standardisation

Standardisation measures

(1) The retail packaging of tobacco products must comply with any requirements prescribed by the regulations as to the following matters:

(a) the number of units, mass or volume of a tobacco product included in the retail packaging of that product;

(b) the pricing of a tobacco product in retail packaging of that number of units, mass or volume.

Exception—shisha tobacco products

(2) This section does not apply to the retail packaging of shisha tobacco products.

76 Plain packaging—prohibited terms, trade marks and other marks

No prohibited terms on retail packaging

(1) No prohibited term may appear anywhere on the retail packaging of tobacco products.

Note: For ***prohibited term***, see section 72.

No trade marks or other marks on retail packaging

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

Note 1: For ***mark***, see section 8.

Note 2: This section does not apply to wrappers (see subsection (6)).

Permitted trade marks and marks

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

(a) the brand name and any variant name for the tobacco product;

(b) health warnings;

(c) mandatory markings;

(d) any other trade mark or mark permitted by regulations (if any) made for the purposes of this paragraph.

Note: The brand name or variant name must not be or include a prohibited term (see section 84).

(4) Any brand name or variant name that appears on the retail packaging of tobacco products must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Restrictions

(5) Any trade mark or mark that is permitted under this Act to appear on the retail packaging of tobacco products must not:

(a) be false, misleading, deceptive or likely to create an erroneous impression about the tobacco product’s characteristics, health effects, risks or emissions; or

(b) directly or indirectly create an impression that the tobacco product is less harmful than other tobacco products; or

(c) wholly or partly obscure any health warning or mandatory marking; or

(d) constitute a tobacco advertisement; or

(e) provide access to a tobacco advertisement.

Note: For health warnings, see section 77 and for mandatory markings, see section 78.

Section not to apply to wrappers

(6) This section does not apply to a plastic or other wrapper that covers:

(a) the retail packaging of a tobacco product; or

(b) a tobacco product that is for retail sale.

Note: For the requirements for wrappers, see section 79.

77 Plain packaging—health warnings

(1) The retail packaging of tobacco products must display the images or combination of images (if any) prescribed by regulations made for the purposes of this subsection.

Chief Medical Officer to recommend health warnings

(2) Before regulations are made under subsection (1), the Commonwealth Chief Medical Officer must have recommended that the images or combination of images be prescribed for the purposes of that subsection.

Commencement of regulations prescribing new health warnings

(3) If:

(a) regulations are made under subsection (1); and

(b) those regulations are not the first such regulations made under that subsection;

the regulations must commence no earlier than 6 months after the day the regulations are made.

78 Plain packaging—mandatory markings

Mandatory markings must appear on retail packaging

(1) The regulations may prescribe markings that must appear on the retail packaging of tobacco products.

(2) Mandatory markings must not, wholly or partly, obscure any health warning on the retail packaging of tobacco products.

Section not to apply to wrappers

(3) This section does not apply to a plastic or other wrapper that covers:

(a) the retail packaging of a tobacco product; or

(b) a tobacco product that is for retail sale.

Note: For the requirements for wrappers, see section 79.

79 Plain packaging—wrappers

A plastic or other wrapper that forms part of the retail packaging of tobacco products must comply with the regulations (if any) made for the purposes of this section.

80 Plain packaging—prohibited tobacco product accessories

The retail packaging of tobacco products must not include a tobacco product accessory unless permitted by regulations (if any) made for the purposes of this section.

81 Plain packaging—inserts and onserts

(1) The retail packaging of tobacco products (within the meaning of any of paragraphs (a) to (d) of the definition of ***retail packaging*** in section 70):

(a) must include the health promotion inserts, and any other inserts or onserts, prescribed by regulations made for the purposes of this paragraph; and

(b) must not include any other inserts or onserts.

(2) Despite subsection (1), the retail packaging of tobacco products mentioned in that subsection may include any inserts or onserts permitted by regulations (if any) made for the purposes of this subsection.

Chief Medical Officer to recommend health promotion inserts

(3) Before regulations are made under paragraph (1)(a) prescribing health promotion inserts, the Commonwealth Chief Medical Officer must have recommended that the inserts be prescribed for the purposes of that paragraph.

Commencement of regulations prescribing new health promotion inserts

(4) If:

(a) regulations are made under paragraph (1)(a) prescribing health promotion inserts; and

(b) those regulations are not the first such regulations made under that paragraph;

the regulations must commence no earlier than 6 months after the day the regulations are made.

82 Retail packaging not to produce noise or smell

No part of the retail packaging of tobacco products may make a noise, or contain or produce a smell.

83 Retail packaging must not change after retail sale

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

(a) heat activated inks;

(b) inks or embellishments designed to appear gradually over time;

(c) inks that appear fluorescent in certain light;

(d) panels designed to be scratched or rubbed to reveal an image or text;

(e) removable tabs;

(f) fold‑out panels;

(g) any other feature prescribed by regulations made for the purposes of this paragraph.

Division 2—Naming requirements

84 Prohibited terms—brand names and variant names

A brand name or a variant name of a tobacco product must not be or include a prohibited term.

Division 3—Appearance, physical features and content requirements

85 Tobacco products—appearance and physical features

Prohibited terms

(1) No prohibited term may appear anywhere on a tobacco product.

Note: For ***prohibited term***, see section 72.

Trade marks and other marks

(2) No trade mark or other mark may appear anywhere on a tobacco product, other than as permitted by regulations (if any) made for the purposes of this subsection.

Note: For ***mark***, see section 8.

Appearance requirements

(3) The appearance of a tobacco product must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

Physical features requirements

(4) The physical features of a tobacco product must comply with the requirements (if any) prescribed by regulations made for the purposes of this subsection.

86 Tobacco products—contents

(1) A tobacco product must not contain an ingredient that is prohibited by the regulations.

Note: Section 130 requires a report about the ingredients used in tobacco products to be given to the Secretary.

(2) Subsection (1) does not apply to a shisha tobacco product insofar as that product contains molasses.

(3) A tobacco product may contain an ingredient that is permitted by the regulations.

Note: A tobacco product may contain ingredients in addition to those expressly permitted by the regulations (subject to subsection (1)).

87 Tobacco products—prohibited devices

A tobacco product must not contain any device prohibited by the regulations.

Division 4—Tobacco product standards

88 Tobacco products—performance requirements

A tobacco product must comply with the performance requirements (if any) prescribed by regulations made for the purposes of this section.

89 Tobacco products—testing requirements

A tobacco product must comply with the testing requirements (if any) prescribed by regulations made for the purposes of this section.

Division 5—Tobacco product accessories

90 Tobacco product accessories—prohibited terms

A prohibited term must not appear anywhere on:

(a) a tobacco product accessory; or

(b) the wrapping of a tobacco product accessory.

91 Tobacco product accessories—prohibited functions

A tobacco product accessory must not alter, or be capable of altering, the flavour or smell of a tobacco product with which it is used.

Note: Examples of tobacco product accessories covered by this section are:

(a) a flavoured filter tip intended for use with roll‑your‑own tobacco; or

(b) a flavour card designed to infuse a tobacco product with a flavour or smell.

Part 3.4—General offences and civil penalty provisions—tobacco product requirements

Division 1—Tobacco products not in retail packaging

92 Retail sale of tobacco products without retail packaging

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product by way of retail sale; or

(ii) offers a tobacco product for sale by way of retail sale; and

(b) at the time the product is sold or offered for sale, the product is not in retail packaging.

Note 1: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 165).

Note 2: See section 15 for an extended meaning of ***offer***.

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

93 Selling or supplying tobacco products to retailers without retail packaging

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product; or

(ii) offers a tobacco product for sale; or

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

to another person (the ***retailer***); and

(b) at the time the product is sold, offered for sale or supplied to the retailer, the product is not in retail packaging; and

(c) at that time, the person knows that, or is reckless as to whether, the retailer is ordinarily in the business of selling tobacco products by way of retail sale.

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 15 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the sale, offer or supply is in respect of multiple tobacco products;

(b) the tobacco products are cigars; and

(c) the sale or supply of the products is by way of import by the retailer; and

(d) the person reasonably believes that the retailer intends to package each cigar individually for retail sale as a single cigar.

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

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Division 2—Non‑compliant retail packaging of tobacco products

94 Selling or supplying tobacco products in non‑compliant retail packaging

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product; or

(ii) offers a tobacco product for sale; or

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

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

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

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 15 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the sale, offer or supply is in respect of multiple tobacco products; and

(b) the tobacco products are cigars; and

(c) the sale or supply is to another person (the ***retailer***) who is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(d) the person reasonably believes that the retailer intends to repackage each cigar individually for retail sale as a single cigar.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Civil penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

95 Purchasing tobacco products in non‑compliant retail packaging

(1) A person contravenes this subsection if:

(a) the person purchases a tobacco product; and

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

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars purchased by retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the person purchases multiple tobacco products; and

(b) the tobacco products are cigars; and

(c) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(d) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—purchase by individual for personal use

(3) Subsection (1) does not apply to an individual who purchases the tobacco product for the individual’s personal use.

Exception—purchase in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person purchases the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

96 Possessing tobacco products in non‑compliant retail packaging

(1) A person contravenes this subsection if:

(a) the person possesses a tobacco product; and

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

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars possessed by retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the person possesses multiple tobacco products; and

(b) the tobacco products are cigars; and

(c) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(d) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—possession by individual for personal use

(3) Subsection (1) does not apply if:

(a) an individual possesses the tobacco product for the individual’s personal use; and

(b) the amount of the tobacco product in the individual’s possession does not exceed the amount (if any) prescribed by regulations made for the purposes of this paragraph.

Exception—possession in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person possesses the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

97 Packaging tobacco products in non‑compliant retail packaging

(1) A person contravenes this subsection if:

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

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

98 Manufacturing non‑compliant retail packaging of tobacco products

(1) A person contravenes this subsection if:

(a) the person manufactures any retail packaging of tobacco products (other than an insert or onsert); and

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

99 Possessing non‑compliant retail packaging of tobacco products

(1) A person contravenes this subsection if:

(a) the person possesses any retail packaging of tobacco products (other than an insert or onsert); and

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

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—possession by individual

(2) Subsection (1) does not apply if an individual possesses the retail packaging in connection with the individual’s personal use of a tobacco product.

Exception—possession in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person possesses the retail packaging for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(5) For the purposes of subsection (4), strict liability applies to the physical element of the offence that the packaging is retail packaging.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

100 Manufacturing tobacco products that are packaged in non‑compliant retail packaging

(1) A person contravenes this subsection if:

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

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

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

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

Note: The physical elements of offences against subsections (3) and (4) are set out in this subsection (see section 165).

Exception

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

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Division 3—Non‑compliant regulated tobacco items

101 Scope of Division

This Division applies to a contravention of a tobacco product requirement other than a requirement relating to the retail packaging of tobacco products.

Note: Divisions 1 and 2 deal with contraventions relating to the retail packaging of tobacco products.

102 Selling or supplying non‑compliant regulated tobacco items

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a regulated tobacco item; or

(ii) offers a regulated tobacco item for sale; or

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

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

Note 1: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Note 3: See section 15 for an extended meaning of ***offer***.

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

103 Purchasing non‑compliant regulated tobacco items

(1) A person contravenes this subsection if:

(a) the person purchases a regulated tobacco item; and

(b) at the time the item is purchased, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (5) are set out in this subsection (see section 165).

Exception—purchase by individual for personal use

(2) Subsection (1) does not apply to an individual who purchases the regulated tobacco item for the individual’s personal use.

Exception—purchase in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person purchases the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

104 Possessing non‑compliant regulated tobacco items

(1) A person contravenes this subsection if:

(a) the person possesses a regulated tobacco item; and

(b) at the time of possession, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (5) are set out in this subsection (see section 165).

Exception—possession by individual for personal use

(2) Subsection (1) does not apply to an individual who possesses the regulated tobacco item for the individual’s personal use.

Exception—possession in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person possesses the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

105 Manufacturing non‑compliant regulated tobacco items

(1) A person contravenes this subsection if:

(a) the person manufactures a regulated tobacco item; and

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

Note 1: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Part 3.5—Offences and civil penalty provisions relating to constitutional corporations—tobacco product requirements

Division 1—Tobacco products not in retail packaging

106 Retail sale of tobacco products without retail packaging to a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product by way of retail sale; or

(ii) offers a tobacco product for sale by way of retail sale;

to another person; and

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

(c) at the time the product is sold or offered for sale, the product is not in retail packaging.

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: See section 15 for an extended meaning of ***offer***.

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

107 Selling or supplying tobacco products without retail packaging to retailer who is a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product; or

(ii) offers a tobacco product for sale; or

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

to another person (the ***retailer***); and

(b) the retailer is a constitutional corporation; and

(c) at the time the product is sold, offered for sale or supplied to the retailer, the product is not in retail packaging; and

(d) at that time, the person knows that, or is reckless as to whether, the retailer is ordinarily in the business of selling tobacco products by way of retail sale.

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 15 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the sale, offer or supply is in respect of multiple tobacco products;

(b) the tobacco products are cigars; and

(c) the sale or supply of the products is by way of import by the retailer; and

(d) the person reasonably believes that the retailer intends to package each cigar individually for retail sale as a single cigar.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Division 2—Non‑compliant retail packaging of tobacco products

108 Selling or supplying tobacco products in non‑compliant retail packaging to a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a tobacco product; or

(ii) offers a tobacco product for sale; or

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

to another person (the ***retailer***); and

(b) the retailer is a constitutional corporation; and

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

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

Note 1: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Note 2: See section 15 for an extended meaning of ***offer***.

Exception—cigars sold or supplied to retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the sale, offer or supply is in respect of multiple tobacco products; and

(b) the tobacco products are cigars; and

(c) the retailer is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(d) the person reasonably believes that the retailer intends to repackage each cigar individually for retail sale as a single cigar.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

109 Purchasing tobacco products in non‑compliant retail packaging from a constitutional corporation

(1) A person contravenes this subsection if:

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

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

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

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars purchased by retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the person purchases multiple tobacco products; and

(b) the tobacco products are cigars; and

(c) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(d) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—purchase by individual for personal use

(3) Subsection (1) does not apply to an individual who purchases the tobacco product for the individual’s personal use.

Exception—purchase in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person purchases the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to paragraphs (1)(b) and (c).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

110 Possessing tobacco products in non‑compliant retail packaging obtained from a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person possesses a tobacco product; and

(b) the person obtained possession of the product from a constitutional corporation; and

(c) at the time of possession, the product has been packaged for retail sale; and

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

Note: The physical elements of offences against subsections (5) and (7) are set out in this subsection (see section 165).

Exception—cigars possessed by retailer for individual resale

(2) Subsection (1) does not apply if:

(a) the person possesses multiple tobacco products; and

(b) the tobacco products are cigars; and

(c) the person is ordinarily engaged in the business of selling tobacco products by way of retail sale in Australia; and

(d) the person intends to repackage each cigar individually for retail sale as a single cigar.

Exception—possession by individual for personal use

(3) Subsection (1) does not apply if:

(a) an individual possesses the tobacco product for the individual’s personal use; and

(b) the amount of the tobacco product in the individual’s possession does not exceed the amount (if any) prescribed by regulations made for the purposes of this paragraph.

Exception—possession in the course of compliance and enforcement activities

(4) Subsection (1) does not apply to any of the following persons if the person possesses the tobacco product for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

Note 1: A defendant bears an evidential burden in relation to the matters in subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(6) For the purposes of subsection (5), strict liability applies to:

(a) the physical element of the offence that the person from whom possession of the tobacco product was obtained is a constitutional corporation; and

(b) paragraph (1)(c).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

111 Packaging tobacco products in non‑compliant retail packaging under a contract with a constitutional corporation

(1) A person contravenes this subsection if:

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

(b) the product is packaged under a contract with a constitutional corporation; and

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(3) For the purposes of subsection (2), strict liability applies to:

(a) the physical element of the offence that the tobacco product is packaged for retail sale; and

(b) paragraph (1)(b).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

112 Manufacturing non‑compliant retail packaging of tobacco products under a contract with a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person manufactures any retail packaging of tobacco products (other than an insert or onsert); and

(b) the retail packaging is manufactured under a contract with a constitutional corporation; and

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(3) For the purposes of subsection (2), strict liability applies to:

(a) the physical element of the offence that the packaging is retail packaging; and

(b) paragraph (1)(b).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

113 Possessing non‑compliant retail packaging of tobacco products obtained from a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person possesses any retail packaging of tobacco products (other than an insert or onsert); and

(b) the person obtained possession of the retail packaging from a constitutional corporation; and

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

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—possession by individual

(2) Subsection (1) does not apply if an individual possesses the retail packaging in connection with the individual’s personal use of a tobacco product.

Exception—possession in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person possesses the retail packaging for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

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

Note 2: There is another exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(5) For the purposes of subsection (4), strict liability applies to the physical elements of the offence that:

(a) the packaging is retail packaging; and

(b) the person from whom possession of the tobacco product was obtained is a constitutional corporation.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

114 Manufacturing tobacco products that are packaged in non‑compliant retail packaging by a constitutional corporation

(1) A person contravenes this subsection if:

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

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

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

(d) the tobacco product is packaged for retail sale by the other person; and

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

Note: The physical elements of offences against subsections (3) and (5) are set out in this subsection (see section 165).

Exception

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

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Division 3—Non‑compliant regulated tobacco items

115 Scope of Division

This Division applies to a contravention of a tobacco product requirement other than a requirement relating to the retail packaging of tobacco products.

Note: Divisions 1 and 2 deal with contraventions relating to the retail packaging of tobacco products.

116 Selling or supplying non‑compliant regulated tobacco items to a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person:

(i) sells a regulated tobacco item; or

(ii) offers a regulated tobacco item for sale; or

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

to another person; and

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

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Note 3: See section 15 for an extended meaning of ***offer***.

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

117 Purchasing non‑compliant regulated tobacco items from a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person purchases a regulated tobacco item from another person; and

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

(c) at the time the product is purchased, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—purchase by individual for personal use

(2) Subsection (1) does not apply to an individual who purchases the regulated tobacco item for the individual’s personal use.

Exception—purchase in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person purchases the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

118 Possessing non‑compliant regulated tobacco items obtained from a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person possesses a regulated tobacco item; and

(b) the person obtained possession of the item from a constitutional corporation; and

(c) at the time of possession, the item does not comply with a tobacco product requirement.

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—possession by individual for personal use

(2) Subsection (1) does not apply to an individual who possesses the regulated tobacco item for the individual’s personal use.

Exception—possession in the course of compliance and enforcement activities

(3) Subsection (1) does not apply to any of the following persons if the person possesses the regulated tobacco item for the purposes of monitoring or investigating compliance with, or exercising powers under or in relation to, this Act:

(a) an authorised officer;

(b) a member or special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(c) a member of the police force or police service of a State or Territory;

(d) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning regulated tobacco items.

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

Note 2: There is another exception to subsection (1) in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(5) For the purposes of subsection (4), strict liability applies to the physical element of the offence that the person from whom possession of the item was obtained is a constitutional corporation.

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

119 Manufacturing non‑compliant regulated tobacco items under a contract with a constitutional corporation

(1) A person contravenes this subsection if:

(a) the person manufactures a regulated tobacco item under a contract with another person; and

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

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

Note 1: The physical elements of offences against subsections (2) and (4) are set out in this subsection (see section 165).

Note 2: There is an exception to this subsection in section 120 (export exception).

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Part 3.6—Miscellaneous

Division 1—Export exception

120 Export exception for non‑compliant retail packaging or regulated tobacco items

Scope

(1) This section applies in relation to subsection (1) (the ***conduct rule***) of each of the following provisions:

(a) sections 94 to 100;

(b) sections 102 to 105;

(c) sections 108 to 114;

(d) sections 116 to 119.

Export exception

(2) The conduct rule does not apply to a person (the ***relevant person***) if:

(a) the relevant person engages in conduct that would (apart from this section) contravene the conduct rule in relation to a regulated tobacco item; and

(b) subsection (3) is satisfied in relation to the item.

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

Export conditions

(3) This subsection is satisfied in relation to a regulated tobacco item if:

(a) a contract or arrangement has been entered into, or an understanding has been reached, with another person for the item to be exported (whether or not the relevant person is a party to that contract, arrangement or understanding); and

(b) the relevant person engages in the conduct in the course of, or for the purposes of, the item being exported; and

(c) in a case where the relevant person sells or supplies the item, or offers to sell or supply the item—the sale or supply is not, or would not be, a retail sale; and

(d) in a case where the relevant person purchases the item—the relevant person does not purchase the item in the course of a retail sale.

Division 2—Interaction with Trade Marks Act and Designs Act

121 Effect on the Trade Marks Act of non‑use of trade mark as a result of this Act

Effect on use requirements under Trade Marks Act

(1) For the purposes of the Trade Marks Act and regulations made under that Act, an applicant for the registration of a trade mark in respect of a regulated tobacco item is taken to intend to:

(a) use the trade mark in Australia in relation to that item; or

(b) authorise another person to use the trade mark in Australia in relation to that item; or

(c) assign the trade mark to a body corporate that is about to be constituted with a view to the body corporate using the trade mark in Australia in relation to that item;

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

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

Effect on registration under Trade Marks Act

(3) To avoid doubt, subsection (4) applies for the purposes of:

(a) sections 38 and 84A of the Trade Marks Act; and

(b) any power of the Registrar of Trade Marks under the regulations made under that Act:

(i) to revoke the acceptance of an international registration designating Australia (within the meaning of those regulations); or

(ii) to amend or cease protection of a protected international trade mark (within the meaning of those regulations).

(4) Neither:

(a) the operation of this Act; nor

(b) the circumstance that a person is prevented, by or under this Act, from using a trade mark on or in relation to regulated tobacco items, or on or in relation to the retail packaging of tobacco products;

are circumstances that make it reasonable or appropriate:

(c) not to register the trade mark; or

(d) to revoke the acceptance of an application for registration of the trade mark; or

(e) to register the trade mark subject to conditions or limitations; or

(f) to revoke the registration of the trade mark.

Proceedings relating to opposed applications

(5) For the purposes of paragraph 100(1)(c) of the Trade Marks Act, an opponent is taken to have rebutted an allegation if the opponent establishes that, but for the operation of this Act, the registered owner would have used the trade mark in Australia:

(a) on or in relation to regulated tobacco items; or

(b) on or in relation to the retail packaging of tobacco products.

Trade Marks regulations applying provisions of Trade Marks Act

(6) Subsections (1) to (5) also apply in relation to regulations made under the Trade Marks Act that apply provisions of the Trade Marks Act that are affected by this section, including where the regulations apply those provisions in modified form.

122 Effect on the Designs Act of failure to make products as a result of this Act

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

(a) under section 90 of the Designs Act, requiring the grant of a licence in relation to the design; or

(b) under section 92 of that Act, revoking the registration of the design.

Division 3—Additional tobacco product requirements

123 Regulations may prescribe additional requirements

(1) The regulations may prescribe additional requirements in relation to any of the following:

(a) the retail packaging of tobacco products;

(b) the content of tobacco products;

(c) tobacco product accessories;

(d) standards for tobacco products.

(2) Before regulations are made under subsection (1), the Minister must be satisfied that making the proposed regulations will advance either or both of the following objects of this Act:

(a) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(b) giving effect to Australia’s obligations under the Convention on Tobacco Control (see paragraph 3(1)(b)).

(3) Part 3.3 does not limit subsection (1).

Chapter 4—Permanent bans on certain tobacco products

Part 4.1—Introduction

124 Simplified outline of this Chapter

This Chapter imposes a permanent ban on chewing tobacco and snuffs intended for oral use.

A person who contravenes this ban by dealing in, or possessing, such a product may commit an offence or be liable for a civil penalty.

125 Tobacco products that are permanently banned

The following tobacco products are permanently banned under this Act:

(a) chewing tobacco;

(b) snuffs intended for oral use.

Part 4.2—Offences and civil penalty provisions

126 Dealing in permanently banned tobacco products

(1) A person contravenes this subsection if:

(a) the person engages in conduct; and

(b) the conduct is:

(i) the importation or manufacture of; or

(ii) the sale or supply of, or the offer to sell or supply;

a tobacco product; and

(c) at the time the person engages in the conduct, the tobacco product is permanently banned under this Act; and

(d) any of the following apply:

(i) the person is a constitutional corporation;

(ii) the person is a body corporate that is incorporated in a Territory;

(iii) the conduct occurs in the course of constitutional trade or commerce;

(iv) the conduct occurs in a Territory.

Note: The physical elements of offences against subsections (4) and (7) are set out in this subsection (see section 165).

Exception—importation for personal use

(2) Subsection (1) does not apply if:

(a) the person who engages in the conduct is an individual; and

(b) the conduct is the importation of the tobacco product for personal use by the individual; and

(c) the amount of the tobacco product does not exceed the limit (if any) on the importation of such a product prescribed by another law of the Commonwealth.

Exception—sale or supply by way of export

(3) Subsection (1) does not apply if:

(a) the conduct engaged in by the person is the sale or supply of, or an offer to sell or supply, the tobacco product by way of export; and

(b) the sale or supply is not, or would not be, a retail sale.

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

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

(5) For the purposes of subsection (4), strict liability applies to paragraphs (1)(c) and (d).

Geographical application

(6) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (4).

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

127 Possessing permanently banned tobacco products

(1) A person contravenes this subsection if:

(a) the person possesses a tobacco product; and

(b) at the time of possession, the tobacco product is permanently banned under this Act; and

(c) any of the following apply:

(i) the person is a constitutional corporation;

(ii) the person is a body corporate that is incorporated in a Territory;

(iii) the person possesses the tobacco product in or for the purposes of constitutional trade or commerce;

(iv) the person possesses the tobacco product in a Territory.

Note: The physical elements of offences against subsections (4) and (6) are set out in this subsection (see section 165).

Exception—possession for personal use

(2) Subsection (1) does not apply if:

(a) the person who possesses the tobacco product is an individual; and

(b) the possession of the tobacco product is for personal use by the individual; and

(c) the tobacco product was imported in compliance with another law of the Commonwealth.

Exception—sale or supply by way of export

(3) Subsection (1) does not apply if:

(a) the possession of the tobacco product is for the purpose of:

(i) the sale or supply of; or

(ii) an offer to sell or supply;

the tobacco product by way of export; and

(b) the sale or supply is not, or would not be, a retail sale.

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

Fault‑based offence

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

Penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

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

Strict liability offence

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

Penalty:

(a) for an individual—60 penalty units; and

(b) for a body corporate—600 penalty units.

Civil penalty provision

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

Civil penalty:

(a) for an individual—2,000 penalty units; and

(b) for a body corporate—20,000 penalty units.

Chapter 5—Reporting and information disclosure

Part 5.1—Introduction

128 Simplified outline of this Chapter

This Chapter requires certain manufacturers and importers of tobacco products (collectively known as reporting entities) to regularly give to the Secretary a number of different reports. The reports are as follows:

(a) a report identifying the ingredients used in manufacturing tobacco products;

(b) a report providing information relating to the volume of tobacco products imported into, or sold or supplied in, Australia;

(c) a report providing information about the entity’s marketing and promotional expenditure;

(d) for an entity that is a manufacturer—a report providing information about the entity’s research and development activities.

In certain circumstances, different kinds of reports from a reporting entity may be consolidated into a single report. Related reporting entities may also combine reports into a single report, either on their own initiative or as directed by the Secretary.

The Minister may publish any report, or part of a report, received from a reporting entity under this Chapter. However, the Minister must not publish trade secrets or information that has a commercial value that would be, or could be, destroyed or diminished if the information were disclosed.

A reporting entity that contravenes a reporting requirement may commit an offence or be liable for a civil penalty. The Minister may also decide to publish information about the non‑compliance, including the identity of the reporting entity.

129 Meaning of *reporting entity*

(1) Each of the following persons is a ***reporting entity***:

(a) a person who is a manufacturer of tobacco products that are sold or supplied, or offered for sale or supply, in Australia;

(b) a person who is an importer of tobacco products that are sold or supplied, or offered for sale or supply, in Australia.

Note: The meaning of ***person*** is affected by sections 169 (partnerships), 170 (unincorporated associations) and 171 (trusts).

Reporting entities may be prescribed

(2) The regulations may prescribe a person to be a ***reporting entity*** for the purposes of this Act.

(3) Before regulations are made under subsection (2), the Minister must be satisfied that the person proposed to be prescribed is involved in the sale or supply (other than by way of retail sale) of tobacco products in Australia.

Part 5.2—Reports

Division 1—Required reports

130 Tobacco product ingredients

(1) A reporting entity must give to the Secretary a report that identifies the ingredients (other than processing aids) used in manufacturing each kind of tobacco product sold or supplied, or offered for sale or supply, by the entity in Australia during the reporting period.

Note: The ingredients of a cigarette include the paper, and any filter tip, used in manufacturing the cigarette (see subsection 9(2)).

Contents of report

(2) The report must identify the following for each kind of tobacco product:

(a) the brand name and variant name (if any) of the product;

(b) the common, chemical and trade name of each ingredient;

(c) the purpose for which the ingredient is used;

(d) the amount of the ingredient used in the product.

Reporting period

(3) For the purposes of this section, a ***reporting period*** is a financial year.

(4) The report must be given to the Secretary within 30 days after the end of the financial year.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

131 Tobacco product volumes

(1) A reporting entity must give to the Secretary a report that includes the information mentioned in subsection (2) for each kind of tobacco product sold or supplied, or offered for sale or supply, by the entity in Australia during the reporting period.

Contents of report

(2) For the purposes of subsection (1), the information is the following:

(a) if the reporting entity is an importer—the total number of units imported by the reporting entity;

(b) if the reporting entity is an importer—the total mass, in kilograms, imported by the reporting entity;

(c) the total number of units sold or supplied by the reporting entity;

(d) the total mass, in kilograms, sold or supplied by the reporting entity;

(e) the total Australian dollar value of sales revenue, including excise duty;

(f) the total number of units destroyed by the reporting entity;

(g) the total mass, in kilograms, destroyed by the reporting entity.

Reporting period

(3) For the purposes of this section, a ***reporting period*** is each 3 month period ending on 31 March, 30 June, 30 September or 31 December.

(4) The report must be given to the Secretary within 30 days after the end of the reporting period.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

132 Marketing and promotional expenditure

(1) A reporting entity must give to the Secretary a report that contains information about the activities mentioned in subsection (2) (to the extent they are not prohibited by this Act) conducted by the entity during the reporting period.

Contents of report

(2) For the purposes of subsection (1), the activities are the following:

(a) marketing, promotion and sponsorship (such as corporate hospitality functions);

(b) corporate social responsibility activities;

(c) developing and designing retail packaging for tobacco products;

(d) contributions of a kind mentioned in subsection 39(1);

(e) lobbying;

(f) services or funding provided to any industry group or organisation that seeks to influence the development of public policy relating to tobacco control;

(g) philanthropy;

(h) rebates and reward systems offered to distributors and retailers of tobacco products;

(i) arrangements entered into with social media influencers.

Note: For paragraph (2)(d), the contributions mentioned in subsection 39(1) are political donations and electoral expenditure.

(3) The report must include for each activity mentioned in subsection (2):

(a) a description of the activity; and

(b) the expenditure on the activity during the reporting period; and

(c) the kind of tobacco product (if any) in relation to which the activity was undertaken.

Reporting period

(4) For the purposes of this section, a ***reporting period*** is a financial year.

(5) The report must be given to the Secretary within 30 days after the end of the financial year.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

133 Tobacco product research and development—manufacturers

(1) This section applies to a reporting entity that is a manufacturer of tobacco products.

(2) The reporting entity must give to the Secretary a report that contains the information mentioned in subsection (3) about the entity’s research and development activities undertaken during the reporting period in relation to tobacco products manufactured by the entity that are or may be sold, or offered for sale or supply, in Australia (whether during reporting period or otherwise).

Contents of report

(3) For the purposes of subsection (2), information about the following research and development activities is required:

(a) tobacco product innovations;

(b) toxicity of tobacco products;

(c) ingredients of tobacco products;

(d) flavour, smell or intensity of tobacco products;

(e) addictiveness of tobacco products;

(f) consumer behaviour or preferences.

(4) The report must include the following for each of the activities mentioned in subsection (3):

(a) a summary of the work that has been undertaken;

(b) the period during which the work was undertaken;

(c) the expenditure on the work during the reporting period.

Reporting period

(5) For the purposes of this section, a ***reporting period*** is a financial year.

(6) The report must be given to the Secretary within 30 days after the end of the reporting period.

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

134 Determinations by Secretary

(1) The Secretary may, by notifiable instrument, determine that the obligation to provide one or more reports under this Part does not apply to a specified reporting entity. The determination may be subject to conditions.

(2) The Secretary must not:

(a) revoke a determination under subsection (1); or

(b) vary such a determination by amending or including conditions to which the determination is subject;

unless the Secretary has notified the entity, in writing, that it is considering revoking or varying the determination.

Division 2—General matters relating to reports

135 Scope of Division

This Division applies in relation to reports required to be given under this Chapter.

136 How reports must be given

(1) A report must be given in a form and manner (if any) approved in an instrument under subsection (2).

(2) The Secretary may, by notifiable instrument, approve a form or manner for the purposes of subsection (1).

137 Contents of reports

Signature and certification of report

(1) A report must:

(a) be signed on behalf of the reporting entity by a director or other officer (both within the meaning of the *Corporations Act 2001*) of the entity; and

(b) state that the information contained in the report is true and correct to the best of the director’s or officer’s knowledge; and

(c) state that a copy of the report will be given to the entity’s governing body.

Contents of report—basic details

(2) A report must include the following:

(a) the name of the reporting entity;

(b) if the reporting entity has an ABN—the ABN;

(c) a description of the entity’s main business activities;

(d) a statement of the period to which the report relates;

(e) the date the report was signed;

(f) if the entity is a related body corporate in relation to another body corporate that is itself a reporting entity—the name of the other body corporate and a description of the relationship.

Note: For ***related body corporate***, see section 8.

138 Consolidated reports

(1) A reporting entity may provide a single report (the ***consolidated report***) that contains 2 or more reports required to be given by the reporting entity under this Chapter.

(2) The reports in the consolidated report must each cover a reporting period that ends on the same day (even if the duration of the reporting periods differ).

(3) The consolidated report must:

(a) separately identify each of the reports required by Division 1; and

(b) satisfy subsection 137(1) in relation to each report.

Direction by Secretary

(4) The Secretary may, by notifiable instrument, direct a reporting entity to provide reports in the form of a consolidated report.

139 Reporting by related entities

Scope

(1) This section applies if 2 or more reporting entities are related bodies corporate.

Note: For ***related body corporate***, see section 8.

Group reports

(2) The reporting entities may combine the reports required to be given by the entities under this Chapter into a single report (the ***group report***).

(3) The group report must:

(a) state the reporting entities that are covered by the report; and

(b) describe how those entities are related bodies corporate; and

(c) separately identify each report given by each entity; and

(d) satisfy subsection 137(1) in relation to each report contained in the group report.

140 Direction by Secretary

The Secretary may, by notifiable instrument, direct 2 or more reporting entities who are related bodies corporate to provide reports in the form of a group report under section 139.

Note: For ***related body corporate***, see section 8.

141 No duplication of information

(1) A report given by a reporting entity must not duplicate the information given in a report by another reporting entity to which the first entity is a related body corporate.

Note: For ***related body corporate***, see section 8.

(2) Subsection (1) applies whether or not the reporting entities submit a group report under section 139.

142 Extensions of time

Applications for further time

(1) A reporting entity may apply, in writing, to the Secretary for an extension to the period in which to give a report.

(2) The application must be made before the end of the period for giving the report.

(3) The period for giving the report is extended until:

(a) if the Secretary extends the period for giving the report—the end of that extended period; or

(b) if the Secretary refuses to extend the period for giving the report—the day that is 7 days after written notice of the Secretary’s decision is given to the reporting entity.

Form and manner of application

(4) The application must be made in a form and manner (if any) approved in an instrument under subsection (5).

(5) The Secretary may, by notifiable instrument, approve a form or manner for the purposes of subsection (4).

Contents of application

(6) The application must:

(a) state the extension sought to the period; and

(b) state the circumstances that have resulted in the need for the extension; and

(c) include evidence of those circumstances; and

(d) include any other information prescribed by regulations made for the purposes of this paragraph.

Decision to extend period

(7) The Secretary may, by written notice to the entity, extend the period for giving the report if, after considering:

(a) the application; and

(b) any matters prescribed by regulations made for the purposes of this paragraph;

the Secretary is satisfied that:

(c) the circumstances that have resulted in the need for an extension of time are exceptional; or

(d) those circumstances were outside the entity’s reasonable control.

(8) An extension to the period must be for such time as the Secretary considers appropriate, having regard to:

(a) the nature of the circumstances that have resulted in the need for further time; and

(b) the strength of the evidence included in the application.

(9) The Secretary may impose any condition that the Secretary considers appropriate on the extension.

Review by Administrative Appeals Tribunal

(10) Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Secretary to:

(a) refuse to grant further time; or

(b) grant a shorter period of time than that sought in the application; or

(c) impose a condition on the grant of further time.

143 Secretary may request additional information

(1) The Secretary may, by written notice to a reporting entity, request the entity to provide specified information about, or in relation to, a matter that is mentioned in a report given by the entity.

(2) The request must:

(a) be in writing; and

(b) specify the period in which the information is to be given.

(3) The reporting entity must comply with the request before the end of:

(a) the period specified in the request; or

(b) any longer period allowed by the Secretary.

144 Regulations may prescribe additional requirements

(1) The regulations may prescribe the following:

(a) details about the information to be included in a report under this Chapter;

(b) additional kinds of information that are to be included in a report under this Chapter.

(2) Before regulations are made under subsection (1), the Minister must be satisfied that making the proposed regulations will advance either or both of the following objects of this Act:

(a) improving public health by discouraging smoking and the use of regulated tobacco items (see paragraph 3(1)(a));

(b) giving effect to Australia’s obligations under the Convention on Tobacco Control (see paragraph 3(1)(b)).

Division 3—Publication and disclosure

145 Publication of reports and information

Permitted publications

(1) The Minister may publish, in any manner the Minister considers appropriate, the following information (the ***reported information***):

(a) any report, or part of a report, received from a reporting entity under this Chapter;

(b) any data or other information contained in such a report.

Restrictions on publication

(2) However, the Minister must not publish reported information under subsection (1) if the information is:

(a) a trade secret of the reporting entity; or

(b) other information of the reporting entity that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were publicly disclosed.

(3) Subsection (2) does not apply to reported information that is:

(a) already in the public domain; or

(b) required to be disclosed under another law of the Commonwealth, or under a law of a State or Territory; or

(c) readily discoverable.

146 Disclosure for research, policy development or data analysis

(1) The Secretary may disclose to another person or body information (the ***reported information***) mentioned in subsection 145(1) for the purposes of the person or body undertaking research, policy development or data analysis to assist the Department with:

(a) the administration of this Act; or

(b) achieving one or more objects of this Act.

(2) The Secretary is not authorised to disclose reported information under subsection (1) of this section to:

(a) another person who is not employed or engaged by the Commonwealth or by a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or

(b) a body that is not such a Commonwealth entity;

unless:

(c) the other person or body has undertaken not to use or further disclose the reported information except in accordance with a written agreement that:

(i) is in force between the Commonwealth and that person or body; and

(ii) applies in relation to the reported information; and

(d) the Secretary is satisfied that the reported information will be used or further disclosed only in accordance with the agreement.

147 Publication of information about failure to comply with Chapter

(1) If the Minister is reasonably satisfied that a reporting entity has failed to comply with this Chapter, the Minister may decide to publish the following information (the ***non‑compliance information***):

(a) the identity of the entity;

(b) the details of the non‑compliance;

in any way the Minister considers appropriate.

(2) Before publishing the non‑compliance information, the Minister must give the reporting entity written notice of the decision and the reasons for the decision.

(3) After the Minister gives the reporting entity notice of the decision, the Minister may publish the non‑compliance information unless the reporting entity:

(a) makes an application under subsection (4) for review of the decision; and

(b) gives the Minister a copy of that application;

within 10 business days after the reporting entity is given notice of the decision.

Review by Administrative Appeals Tribunal

(4) Applications may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under subsection (1) to publish non‑compliance information.

(5) If a reporting entity makes such an application, the Minister may publish the non‑compliance information only if:

(a) the Administrative Appeals Tribunal affirms or varies the Minister’s decision; or

(b) the reporting entity withdraws the application for review of the decision.

Part 5.3—Offence and civil penalty provision

148 Non‑compliance with reporting obligations

(1) A person contravenes this subsection if:

(a) the person is a reporting entity; and

(b) the person is required, under this Chapter, to give the Secretary:

(i) a report; or

(ii) additional information about a matter in a report; and

(c) the person does not give the report or information in accordance with this Chapter.

Note: The physical elements of offences against subsections (2) and (5) are set out in this subsection (see section 165).

Fault‑based offence

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

Penalty: 20 penalty units.

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

Offences—extended geographical jurisdiction

(4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (2).

Strict liability offence

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

Penalty: 10 penalty units.

(6) A person who contravenes subsection (2) or (5) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

Civil penalty provision

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

Civil penalty: 20 penalty units.

(8) The maximum civil penalty for each day that a contravention of subsection (7) continues is 10% of the maximum civil penalty that can be imposed in respect of a contravention of that subsection.

Note: Subsection (7) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

Chapter 6—Compliance and enforcement

Part 6.1—Introduction

149 Simplified outline of this Chapter

This Chapter deals with compliance and enforcement.

Compliance and enforcement activities are primarily undertaken by persons appointed by the Secretary as authorised officers for the purposes of this Act.

Authorised officers may do any of the following:

(a) require a person to given information or documents, or to attend and answer questions, relevant to the administration or enforcement of this Act;

(b) enter premises under a warrant or with the consent of the occupier;

(c) exercise monitoring powers under Part 2 of the Regulatory Powers Act;

(d) exercise investigation powers under Part 3 of the Regulatory Powers Act.

Authorised officers also have certain other functions and powers under the Regulatory Powers Act.

The Regulatory Powers Act also sets out the mechanisms for enforcing civil penalty provisions, issuing infringement notices and obtaining injunctions.

Part 6.2—Authorised officers

Division 1—Appointment

150 Appointment of authorised officers

(1) The Secretary may, in writing, appoint any of following persons as an authorised officer for the purposes of this Act:

(a) a person who is an APS employee in the Department;

(b) a person who is appointed or engaged (otherwise than under the *Public Service Act 1999*) by:

(i) the Commonwealth; or

(ii) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);

(c) a person:

(i) who is appointed or employed by a State or Territory, or by a local governing body established by or under a law of a State or Territory; and

(ii) who has responsibilities in relation to compliance and enforcement matters concerning control of regulated tobacco items or e‑cigarette products.

(2) The Secretary must not appoint a person as an authorised officer unless the Secretary is satisfied that the person has suitable qualifications, training or experience to properly perform the functions, or exercise the powers, of an authorised officer.

(3) The Secretary may appoint a person mentioned in paragraph (1)(c) as an authorised officer only with the agreement of the State or Territory concerned.

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

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

Division 2—Powers

151 Power to require persons to give information or produce documents

Scope

(1) This section applies if an authorised officer believes on reasonable grounds that a person has information or a document that is relevant to the administration or enforcement of this Act.

Powers of authorised officer

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

(a) to give any such information to a specified authorised officer within the period specified in the notice; or

(b) to produce any such document to a specified authorised officer within the period specified in the notice.

Notice requirements

(3) The period specified in the notice must be at least 14 days after the notice is given to the person.

(4) The notice may specify the manner in which the person is required to comply with the notice.

(5) The notice must state the effect of the following provisions:

(a) subsections (6) and (7);

(b) section 137.1 of the *Criminal Code* (about giving false or misleading information);

(c) section 137.2 of the *Criminal Code* (about producing false or misleading documents).

Offence

(6) A person commits an offence if:

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

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

Penalty: 60 penalty units.

Civil penalty provision

(7) A person is liable to a civil penalty if:

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

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

Civil penalty: 60 penalty units.

152 Power to require person to attend and answer questions

Scope

(1) This section applies if an authorised officer believes on reasonable grounds that a person has information that is relevant to the administration or enforcement of this Act.

Power of authorised officer

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

(a) require the person to appear before a specified authorised officer to answer questions; and

(b) specify a time and place at which the person is to appear.

(3) The notice must state the effect of subsections (7) and (8).

Oral or written answers

(4) A person who attends before an authorised officer may be required by the authorised officer to answer questions orally or in writing.

Oath or affirmation

(5) The authorised officer may question the person on oath or affirmation and for that purpose may:

(a) require the person to take an oath or make an affirmation; and

(b) administer the oath or affirmation to the person.

(6) The oath or affirmation to be taken or made by the person is an oath or affirmation that the statements that the person will make will be true to the best of the person’s knowledge or belief.

Offence

(7) A person commits an offence if:

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

(b) the person:

(i) refuses or fails to attend before the specified authorised officer; or

(ii) attends before the specified authorised officer, but refuses or fails to take an oath or make an affirmation.

Penalty: 60 penalty units.

Civil penalty provision

(8) A person is liable to a civil penalty if:

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

(b) the person:

(i) refuses or fails to attend before the specified authorised officer; or

(ii) attends before the specified authorised officer, but refuses or fails to take an oath or make an affirmation.

Civil penalty: 60 penalty units.

153 Self‑incrimination and self‑exposure

Abrogation of privilege against self‑incrimination

(1) An individual is not excused from giving information, producing a document or answering a question under subsection 151(2) or 152(2) on the ground that giving the information, producing the document or answering the question might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self‑incrimination.

(2) However:

(a) the information given, document produced or the answer given; and

(b) the giving of the information, the production of the document or the answering of the question; and

(c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information, the production of the document or the answering of the question;

are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against:

(d) subsection 151(6) or 152(7) of this Act; or

(e) section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) in relation to giving the information, producing the document or answering the question; or

(f) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) in relation to giving the information, producing the document or answering the question.

Abrogation of privilege against self‑exposure to penalty

(3) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to giving information, producing a document or answering a question under subsection 151(2) or 152(2), the individual is not excused from giving the information, producing the document or answering the question under that provision on that ground.

Note: A body corporate is not entitled to claim the privilege against self‑exposure to a penalty.

Part 6.3—Monitoring and investigation powers

Division 1—Monitoring powers

154 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) 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 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), there are no related provisions.

Authorised applicant and authorised person

(4) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer 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, 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

(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).

Relevant court

(7) 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 and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional monitoring powers

(8) For the purposes of Part 2 of the Regulatory Powers Act, the powers mentioned in subsection (9) are taken to be additional monitoring powers 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 the information mentioned in subsection (2).

(9) The additional monitoring powers are:

(a) the power to sample any thing on premises entered under Part 2 of the Regulatory Powers Act; and

(b) the power to remove and test such samples.

Use of force in executing a warrant

(10) 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) 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

(11) 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).

Self‑incrimination etc.

(12) Despite section 17 of the Regulatory Powers Act, an individual is not excused from answering a question or producing a document, under subsection 24(3) of that Act, as Part 2 of that Act applies in relation to this Act, on the ground that answering the question, or producing the document, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self‑incrimination.

(13) However:

(a) the answer given or document produced; and

(b) the answering of the question or the production of the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

(d) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or

(e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

(14) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 24(3) of the Regulatory Powers Act, as Part 2 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

Note: A body corporate is not entitled to claim the privilege against self‑exposure to a penalty.

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.

155 Consent and identification by authorised officers not required in certain circumstances

Scope

(1) This section applies if:

(a) an authorised officer enters the public area of business premises when they are open to the public; and

(b) the officer’s entry is not made under a monitoring warrant issued under section 32 of the Regulatory Powers Act, as that section applies in relation to this Act; and

(c) the occupier of the premises has not consented to the entry; and

(d) the officer’s entry is solely for the purpose of exercising monitoring powers (within the meaning of the Regulatory Powers Act) in relation to a provision that is subject to monitoring under Part 2 of that Act by doing any one or more of the following:

(i) inspecting the retail packaging of tobacco products;

(ii) purchasing regulated tobacco items;

(iii) observing practices relating to the retail sale of regulated tobacco items.

No requirement to obtain consent or show identity card

(2) Despite paragraph 18(2)(a) and section 25 of the Regulatory Powers Act, the authorised officer is not required to:

(a) obtain the consent of the occupier of the premises to the officer’s entry; or

(b) show the occupier of the premises the officer’s identity card after entering the premises.

Other rights and obligations unaffected

(3) Nothing in this section affects:

(a) the right of an occupier of premises to refuse to allow the authorised officer to enter, or remain, on the premises; or

(b) the obligations of the authorised officer under the Regulatory Powers Act, as it applies in relation to this Act, concerning the exercise of monitoring powers other than those mentioned in subparagraphs (1)(d)(i) to (iii).

Division 2—Investigation powers

156 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 magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

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).

Relevant court

(6) 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 and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Additional investigation powers

(7) The additional powers mentioned in subsection (8) are 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).

(8) The additional investigation powers are:

(a) the power to sample any thing on premises entered under Part 3 of the Regulatory Powers Act; and

(b) the power to remove and test such samples.

Use of force in executing a warrant

(9) 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

(10) 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 etc.

(11) Despite section 47 of the Regulatory Powers Act, an individual is not excused from answering a question, or producing a document, under subsection 54(3) of that Act, as Part 3 of that Act applies in relation to this Act, on the ground that answering the question, or producing the document, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self‑incrimination.

(12) However:

(a) the answer given or document produced; and

(b) the answering of the question or the production of the document; and

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

(d) section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or

(e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

(13) If, at general law, an individual would otherwise be able to claim the privilege against self‑exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 54(3) of the Regulatory Powers Act, as Part 3 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

Note: A body corporate is not entitled to claim the privilege against self‑exposure to a penalty.

Extension to external Territories

(14) 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.

157 Forfeiture of seized regulated tobacco items

Scope

(1) This section applies if:

(a) regulated tobacco items (the ***seized items***) are seized 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 156(1); and

(b) the seized items do not comply with a tobacco product requirement.

Forfeiture notices

(2) An authorised officer may, within 14 days after seizure of the seized items, give a written notice (a ***forfeiture notice***) to:

(a) the owner of the items; or

(b) if the owner of the items cannot be identified after reasonable inquiry—the person from whom the items were seized.

(3) Subsection (2) does not apply if:

(a) the owner of the seized items cannot be identified after reasonable inquiries; and

(b) the items were not seized from a person.

(4) The forfeiture notice must:

(a) identify the seized items; and

(b) state the date on which the items were seized; and

(c) state the tobacco product requirement or requirements with which the items do not comply; and

(d) state that the owner may agree to the forfeiture of the items; and

(e) explain the procedure for the possible return of the items in subsections (5) to (7); and

(f) state that, unless the items are returned to the owner by order of a magistrate under subsection (7), they are forfeited to the Commonwealth by operation of subsection (8).

Owner may apply to magistrate for return of seized items

(5) The owner may apply to a magistrate for an order that the seized items are to be returned to the owner.

(6) The application must be made:

(a) within 30 days after the forfeiture notice was given; or

(b) if no forfeiture notice was given because of subsection (3)—within 30 days after seizure of the seized items.

(7) If the magistrate is satisfied that the seized items do not contravene any tobacco product requirement, the magistrate must order that the items are to be returned to the owner. Otherwise, the magistrate must refuse to make the order.

Forfeiture of seized items to the Commonwealth

(8) The seized items are forfeited to the Commonwealth if:

(a) the owner of the seized items agrees to their forfeiture; or

(b) no application is made to a magistrate under subsection (5) within the required time period; or

(c) an application made to a magistrate under subsection (5) is refused.

(9) The Secretary may retain, destroy, dispose of or otherwise deal with forfeited seized items as the Secretary sees fit.

158 Recovery of costs in relation to seized items

Scope

(1) This section applies if:

(a) regulated tobacco items (the ***seized items***) are seized 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 156(1); and

(b) a person has been convicted of an offence, or found to have contravened a civil penalty provision, under Part 3.4 or 3.5 of this Act in relation to the seized items.

Recovery of costs

(2) The person is liable to pay to the Commonwealth an amount equal to the costs reasonably incurred by the Commonwealth in seizing, retaining, destroying or otherwise dealing with the seized items.

(3) An amount payable by a person under subsection (2):

(a) is a debt due by the person to the Commonwealth; and

(b) may be recovered by action in a court of competent jurisdiction.

159 Modifications of Part 3 of the Regulatory Powers Act

Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 156(1) of this Act as if a reference in paragraphs 66(1)(c) and 67(1)(a) of the Regulatory Powers Act to 60 days were a reference to 90 days.

Note: Those paragraphs relate to the period for returning things seized under Part 3 of the Regulatory Powers Act.

Part 6.4—Enforcing compliance with this Act

Division 1—Civil penalty provisions

160 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 and Family Court of Australia (Division 2);

(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 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.

Division 2—Infringement notices

161 Infringement notices

Provisions subject to an infringement notice

(1) A strict liability offence under this Act 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).

Extension to external Territories

(4) 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

(5) 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.

Division 3—Enforceable undertakings

162 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: 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 Secretary 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 of Australia;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(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 provisions mentioned in subsection (1), extends to every external Territory.

Division 4—Injunctions

163 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

(b) a civil penalty provision of this Act.

Note: Part 7 of the Regulatory Powers Act allows a provision to be enforced by obtaining an injunction.

Authorised person

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

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 and Family Court of Australia (Division 2);

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

Chapter 7—Miscellaneous

Part 7.1—Introduction

164 Simplified outline of this Chapter

This Chapter deals with various miscellaneous matters, including in relation to the following:

(a) general rules about offences and civil penalty provisions;

(b) prohibiting doubling‑up of liabilities;

(c) the treatment of partnerships, unincorporated associations and trusts;

(d) cost recovery;

(e) the constitutional basis for this Act.

This Chapter also provides for the Minister and Secretary to delegate their functions and powers, and includes a power to make regulations.

Part 7.2—General rules about offences and civil penalty provisions

Division 1—Interpretation

165 Physical elements of offences

(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.

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

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

166 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.

(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.

167 Offences against this Act—extended meaning

In this Chapter, a reference to an offence against this Act includes an offence against Chapter 7 of the *Criminal Code* (about the proper administration of Government) that relates to this Act.

Division 2—No doubling‑up of liabilities

168 No doubling‑up of liabilities

(1) If:

(a) conduct of a person is an offence against this Act and is also an offence against the Australian Consumer Law; and

(b) the person has been punished for the offence under the Australian Consumer Law;

the person is not liable to be punished for the offence against this Act.

(2) If a person has been ordered to pay a pecuniary penalty under the Australian Consumer Law, the person is not liable to a civil penalty under this Act in respect of the same conduct.

Division 3—Partnerships, unincorporated associations and trusts

169 Treatment of partnerships

(1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) An offence against this Act that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership who, at the time the offence was committed:

(a) engaged in the relevant conduct; or

(b) aided, abetted, counselled or procured the relevant conduct; or

(c) was in any way knowingly concerned in, or party to, the relevant conduct (whether directly or indirectly and whether by any act or omission of the partner).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(5) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

170 Treatment of unincorporated associations

(1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the unincorporated association by this Act is imposed on each member of the association’s committee of management instead, but may be discharged by any of the members.

(3) An offence against this Act that would otherwise have been committed by the unincorporated association is taken to have been committed by each member of the association’s committee of management who, at the time the offence was committed:

(a) engaged in the relevant conduct; or

(b) aided, abetted, counselled or procured the relevant conduct; or

(c) was in any way knowingly concerned in, or party to, the relevant conduct (whether directly or indirectly and whether by any act or omission of the member).

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

171 Treatment of trusts

(1) This Act applies to a trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

(2) If the trust has a single trustee:

(a) an obligation that would otherwise be imposed on the trust by this Act is imposed on the trustee instead; and

(b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by the trustee.

Trusts with multiple trustees

(3) If the trust has 2 or more trustees:

(a) an obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and

(b) an offence against this Act that would otherwise have been committed by the trust is taken to have been committed by each trustee of the trust who, at the time the offence was committed:

(i) engaged in the relevant conduct; or

(ii) aided, abetted, counselled or procured the relevant conduct; or

(iii) was in any way knowingly concerned in, or party to, the relevant conduct (whether directly or indirectly and whether by any act or omission of the trustee).

Contraventions of civil penalty provisions

(4) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

Part 7.3—Cost recovery

172 Fees for fee‑bearing activities

(1) The regulations may prescribe fees that may be charged in relation to activities carried out by, or on behalf of, the Commonwealth in the performance of functions or the exercise of powers under this Act.

(2) Without limiting subsection (1), the regulations may do any of the following:

(a) prescribe 2 or more fees for the same matter;

(b) prescribe a method for working out a fee;

(c) prescribe the circumstances in which a person is exempt from paying a specified fee;

(d) prescribe the circumstances in which the Secretary may waive a fee;

(e) prescribe the circumstances in which a fee may be refunded, in whole or in part;

(f) prescribe a method for working out the refund of part of a fee.

(3) Without limiting subsection (1), the regulations may specify that the amount of a fee is the cost incurred by the Commonwealth in arranging and paying for another person to carry out the relevant activity.

(4) A fee prescribed under subsection (1) must not be such as to amount to taxation.

173 Paying fees

The regulations may prescribe the time when a specified fee is due and payable.

174 Person liable to pay fees

The regulations may prescribe one or more persons who are liable to pay a specified fee.

175 Late payment fee

(1) If the regulations specify the time when a fee (the ***basic fee***) is due and payable, the regulations may also specify a fee (a ***late payment fee***) that is due and payable if the basic fee is not paid at or before that time.

(2) Without limiting subsection (1), the late payment fee may relate to each day or part of a day that the basic fee remains unpaid after becoming due and payable.

176 Recovery of fees

A fee (including a late payment fee) that is due and payable to the Commonwealth under this Act may be recovered as a debt due to the Commonwealth by action in a court of competent jurisdiction.

177 Secretary may remit or refund fees

(1) The Secretary may remit or refund the whole or part of a fee (including a late payment fee) that is payable, or that has been paid, to the Commonwealth if the Secretary is satisfied there are circumstances that justify doing so.

(2) The Secretary may do so on the Secretary’s own initiative or on written application by a person.

178 Secretary may direct that activities not be carried out

If a person (the ***debtor***) is liable to pay a fee (including a late payment fee) that is due and payable, the Secretary may refuse to carry out, or direct a person not to carry out, specified activities or kinds of activities in relation to the debtor under this Act until the fee has been paid.

Part 7.4—Constitutional provisions

179 Constitutional basis of this Act

Main constitutional basis

(1) Subject to subsection (2), this Act relies on the Commonwealth’s legislative power under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia’s obligations under the Convention on Tobacco Control.

Section does not apply to certain provisions

(2) This section does not apply to the following provisions of this Act:

(a) Part 2.4 (prohibition of e‑cigarette advertisements);

(b) Part 2.5 (prohibition of e‑cigarette sponsorships);

(c) Chapter 4 (permanent bans on certain tobacco products).

Note: The provisions mentioned in this subsection have limited constitutional operation.

180 Additional operation of this Act

(1) In addition to section 179, this Act also has effect as provided by this section.

(2) To avoid doubt, none of subsections (3) to (8) limit the operation of any other subsection in this section.

Trade and commerce power

(3) This Act has the effect it would have if a reference to conduct were expressly confined to conduct that takes place in the course of, or in relation to, constitutional trade or commerce.

Communications power

(4) This Act has the effect it would have if a reference to conduct were expressly confined to conduct engaged in using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution.

Intellectual property power

(5) This Act has the effect it would have if a reference to conduct were expressly confined to conduct engaged in using any of the following within the meaning of paragraph 51(xviii) of the Constitution:

(a) a copyright;

(b) a patent of invention or design;

(c) a trade mark.

Corporations power

(6) This Act has the effect it would have if a reference to conduct were expressly confined to conduct engaged in by:

(a) a constitutional corporation; or

(b) persons or entities through which a constitutional corporation acts; or

(c) a person who is not a constitutional corporation, in a way that affects, is capable of affecting or is engaged in with intent to affect the activities, functions, relationships or business of a constitutional corporation.

External affairs power—geographically external aspect

(7) The Act has the effect if would have if a reference to conduct were expressly confined to conduct engaged in by a person outside Australia.

Territories power

(8) This Act has the effect it would have if a reference to conduct were expressly confined to conduct:

(a) that takes place in a Territory; or

(b) by a body corporate incorporated in a Territory.

Section does not apply to certain provisions

(9) This section does not apply to the following provisions of this Act:

(a) Part 2.4 (prohibition of e‑cigarette advertisements);

(b) Part 2.5 (prohibition of e‑cigarette sponsorships);

(c) Chapter 4 (permanent bans on certain tobacco products).

Note: The provisions mentioned in this subsection already have limited constitutional operation.

181 Acquisition of property

This Act has no effect to the extent (if any) that its operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

Part 7.5—Other matters

182 Delegation by Minister

(1) The Minister may, in writing, delegate to the Secretary the Minister’s functions or powers under the following provisions:

(a) subsection 129(3) (about prescribing a person to be a reporting entity);

(b) section 145 (about publishing Chapter 5 reports and information);

(c) section 147 (about publishing non‑compliance information in relation to Chapter 5).

Note: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

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

183 Delegation by Secretary

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

Note 1: ***SES employee*** and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*, which contain extra rules about delegations.

(2) The functions or powers that may be delegated under subsection (1) include functions or powers the Secretary has as a relevant chief executive, authorised applicant or authorised person for the purposes of a provision of the Regulatory Powers Act because of this Act.

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

184 Protection from liability

(1) This section applies to the following persons (***protected persons***):

(a) the Minister;

(b) the Secretary;

(c) an authorised officer;

(d) a person acting under an authorised officer’s direction or authority.

(2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of anything done by the protected person in good faith:

(a) in the performance or purported performance of a function or duty under or in relation to this Act; or

(b) in the exercise or purported exercise of a power under or in relation to this Act.

185 Reports

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

(a) the number and nature of any contraventions of this Act occurring in the financial year; and

(b) action taken in response to each contravention.

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

(3) The Secretary, when preparing the Department’s annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include the report mentioned in subsection (1) insofar as it covers that period.

186 Regulations

(1) The Governor‑General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Incorporation of other instruments

(2) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(3) Subsection (2) applies even if the instrument or other writing does not exist when the regulations come into force.

(4) Subsection (2) has effect despite subsection 14(2) of the *Legislation Act 2003*.