

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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

3 The Parliament of Australia enacts:

4 **Chapter 1—Preliminary**

5 **Part 1.1—Introduction**
6

7 **1 Short title**

8 This Act is the *Public Health (Tobacco and Other Products) Act*
9 *2023*.

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Chapter 1 Preliminary Part 1.1 Introduction

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
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.	

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

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

13 **3 Objects of this Act**

14 *Objects of Act*

- 15 (1) The objects of this Act are:
16 (a) to improve public health by discouraging smoking and the
17 use of regulated tobacco items; and

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Section 3

- 1 (b) to give effect to certain obligations that Australia has as a
2 party to the Convention on Tobacco Control; and
3 (c) to address the health risks posed by vaping and the use of
4 e-cigarette products.

5 *Means for achieving objects*

- 6 (2) The means for achieving the objects of this Act are the following:
7 (a) limiting the exposure of the public to communications,
8 recommendations or actions that may persuade people to:
9 (i) start smoking or continue smoking; or
10 (ii) start vaping or continue vaping;
11 (b) reducing the appeal of regulated tobacco items and
12 e-cigarette products to consumers;
13 (c) preventing the retail packaging of tobacco products from
14 misleading or deceiving consumers about the harmful effects
15 of smoking or using tobacco products;
16 (d) increasing consumer knowledge of health effects relating to
17 the use of tobacco products;
18 (e) increasing the effectiveness of health warnings on, and health
19 promotion messages in, the retail packaging of tobacco
20 products;
21 (f) discouraging people who have given up smoking or vaping
22 from relapsing;
23 (g) preventing and reducing nicotine addiction;
24 (h) reducing people's exposure to smoke from tobacco products;
25 (i) reducing the environmental risks of tobacco products;
26 (j) limiting novel developments and emerging innovation in
27 tobacco products;
28 (k) limiting the risk of e-cigarette products becoming a gateway
29 into smoking and the use of regulated tobacco items;
30 (l) increasing public knowledge about tobacco products and the
31 tobacco industry.

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Chapter 1 Preliminary
Part 1.1 Introduction

Section 4

1 **4 Simplified outline of this Act**

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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.

1 **5 Application of this Act**

- 2 (1) This Act extends to the external Territories.
- 3 (2) This Act extends to acts, omissions, matters and things outside
4 Australia.

5 **6 Act binds the Crown**

- 6 (1) This Act binds the Crown in each of its capacities.
- 7 (2) This Act does not make the Crown liable to be prosecuted for an
8 offence.

9 **7 Operation of State and Territory laws**

10 *Concurrent operation of State and Territory laws*

- 11 (1) This Act does not exclude or limit the operation of a State or
12 Territory law that is capable of operating concurrently with this
13 Act.
- 14 (2) Without limiting subsection (1), this Act does not exclude or limit
15 the concurrent operation of a law of a State or Territory to the
16 extent that:
- 17 (a) the law makes an act or omission:
- 18 (i) an offence; or
- 19 (ii) subject to a civil penalty; and
- 20 (b) that (or any similar) act or omission is also:
- 21 (i) an offence against this Act; or
- 22 (ii) subject to a civil penalty under this Act.
- 23 (3) To avoid doubt, subsection (2) applies even if the law of the State
24 or Territory does any one or more of the following in relation to
25 the offence or civil penalty:
- 26 (a) provides for a penalty that differs from the penalty provided
27 in this Act;
- 28 (b) provides for fault elements that differ from the fault elements
29 applicable to the offence against this Act;

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Chapter 1 Preliminary
Part 1.1 Introduction

Section 7

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

4 *No doubling-up of liabilities*

5 (4) If:

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

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

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

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

1 **Part 1.2—Interpretation**

2 **Division 1—General definitions**

3 **8 Definitions**

4 In this Act:

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

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

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

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

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

17 Note: A brand name must not be or include a prohibited term (see section
18 84).

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

21 *carrier* has the same meaning as in the *Telecommunications Act*
22 *1997*.

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

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

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Chapter 1 Preliminary

Part 1.2 Interpretation

Division 1 General definitions

Section 8

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

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

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

- 6 (a) the Commonwealth;
- 7 (b) a corporate Commonwealth entity or a Commonwealth
8 company (both within the meaning of the *Public*
9 *Governance, Performance and Accountability Act 2013*);
- 10 (c) a constitutional corporation;
- 11 (d) a foreign entity that is not a constitutional corporation;
- 12 (e) a body corporate that is incorporated in a Territory.

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

- 14 (a) between Australia and a place outside Australia; or
- 15 (b) among the States; or
- 16 (c) between a State and a Territory; or
- 17 (d) between 2 Territories; or
- 18 (e) within a Territory.

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

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

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

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

27 ***e-cigarette***: see section 11.

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

30 ***e-cigarette accessory***: see section 12.

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Preliminary **Chapter 1**
Interpretation **Part 1.2**
General definitions **Division 1**

Section 8

1 ***e-cigarette advertisement***: see section 42.

2 ***e-cigarette product*** means an e-cigarette or an e-cigarette
3 accessory.

4 ***e-cigarette sponsorship***: see section 65.

5 ***engage in conduct*** means:

- 6 (a) do an act; or
7 (b) omit to do an act.

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

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

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

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

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

- 17 (a) section 73 (about the physical features of the retail packaging of
18 tobacco products);
19 (b) section 74 (about the colour and finish of the retail packaging of
20 tobacco products).

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

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

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

25 ***mark***:

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

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Chapter 1 Preliminary

Part 1.2 Interpretation

Division 1 General definitions

Section 8

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

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

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

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

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

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

- 16 (a) section 169 (which deals with partnerships); and
17 (b) section 170 (which deals with unincorporated associations);
18 and
19 (c) section 171 (which deals with trusts).

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

22 **prohibited term**, in relation to regulated tobacco items: see section
23 72.

24 **publish**:

- 25 (a) a tobacco advertisement—see section 29; and
26 (b) an e-cigarette advertisement—see section 55.

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

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

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Preliminary **Chapter 1**
Interpretation **Part 1.2**
General definitions **Division 1**

Section 8

- 1 **related body corporate** has the same meaning as in the
2 *Corporations Act 2001*.
- 3 **reporting entity**: see section 129.
- 4 **retail packaging**: for **retail packaging** of a tobacco product, see
5 section 70.
- 6 **Secretary** means the Secretary of the Department.
- 7 **shisha tobacco product** means a tobacco product that contains
8 molasses as a significant proportion of the product's ingredients.
- 9 **smoking** means smoking tobacco products.
- 10 **Therapeutic Goods Act** means the *Therapeutic Goods Act 1989*
11 and includes any instruments made under that Act.
- 12 **this Act** includes the regulations made under this Act.
- 13 **tobacco advertisement**: see section 19.
- 14 **tobacco product**: see section 9.
- 15 **tobacco product accessory**: see section 10.
- 16 **tobacco product requirement** means any of the following
17 requirements in relation to regulated tobacco items:
18 (a) a requirement specified in Part 3.3;
19 (b) a requirement prescribed by regulations made under, or for
20 the purposes of, a provision in Part 3.3;
21 (c) a requirement prescribed by regulations made for the
22 purposes of subsection 123(1).
- 23 **tobacco sponsorship**: see section 38.
- 24 **Trade Marks Act** means the *Trade Marks Act 1995*.
- 25 **vaping** means inhaling the aerosol or vapour generated or released
26 by an e-cigarette product.

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Chapter 1 Preliminary

Part 1.2 Interpretation

Division 2 Key concepts for this Act

Section 9

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

5 Note: A variant name must not be or include a prohibited term (see section
6 84).

7 **Division 2—Key concepts for this Act**

8 **9 Meaning of *tobacco product***

9 *Basic definition*

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

- 12 (a) processed tobacco in any form;
13 (b) a product that contains tobacco as an ingredient.

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

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

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

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

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

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

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

EXPOSURE DRAFT

Preliminary **Chapter 1**
Interpretation **Part 1.2**
Key concepts for this Act **Division 2**

Section 10

1 *E-cigarette products excluded*

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

4 *Certain therapeutic goods excluded*

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

8 **10 Meaning of tobacco product accessory**

9 *Basic definition*

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

- 11 (a) a cigarette paper (including a pre-rolled cigarette paper) that
12 is not part of a tobacco product;
- 13 (b) a cigarette roller;
- 14 (c) a filter tip for a cigar or cigarette that is not part of a tobacco
15 product;
- 16 (d) a wrapper for tobacco that is in the form of a sheet or tube
17 made from or with tobacco;
- 18 (e) a card, capsule, bead or other device that is capable of
19 altering the flavour, smell or intensity of a tobacco product
20 (except such a device that is part of a tobacco product);
- 21 (f) a tobacco pipe or water pipe that can be used for smoking
22 processed tobacco.

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

25 Note 2: The wrappers mentioned in paragraph (d) are sometimes called
26 'blunts' or 'blunt wraps'.

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

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 1.2 Interpretation

Division 2 Key concepts for this Act

Section 11

- 1 *Tobacco product accessories may be prescribed*
- 2 (2) The regulations may prescribe a kind of item to be a ***tobacco***
3 ***product accessory*** for the purposes of this Act.
- 4 (3) Before regulations are made under subsection (2), the Minister
5 must be satisfied:
- 6 (a) that the item is designed or intended for use with or for the
7 human consumption or use of tobacco products; and
- 8 (b) that making the proposed regulations will advance either or
9 both of the following objects of this Act:
- 10 (i) improving public health by discouraging smoking and
11 the use of regulated tobacco items (see paragraph
12 3(1)(a));
- 13 (ii) giving effect to Australia’s obligations under the
14 Convention on Tobacco Control (see paragraph
15 3(1)(b)).

16 *E-cigarette products excluded*

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

19 *Certain therapeutic goods excluded*

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

23 11 Meaning of *e-cigarette*

24 *Basic definition*

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

EXPOSURE DRAFT

Preliminary **Chapter 1**
Interpretation **Part 1.2**
Key concepts for this Act **Division 2**

Section 12

1 Note: Examples of e-cigarettes include e-cigars, e-hookah pens, e-pens,
2 e-pipes and vapes.

3 *E-cigarettes may be prescribed*

- 4 (2) The regulations may prescribe a kind of item to be an *e-cigarette*
5 for the purposes of this Act.
- 6 (3) Before regulations are made under subsection (2), the Minister
7 must be satisfied:
- 8 (a) that it is appropriate to do so; and
9 (b) that making the proposed regulations will advance either or
10 both of the following objects of this Act:
- 11 (i) improving public health by discouraging smoking and
12 the use of regulated tobacco items (see paragraph
13 3(1)(a));
14 (ii) addressing the health risks posed by vaping and the use
15 of e-cigarette products (see paragraph 3(1)(c)).

16 *Certain therapeutic goods excluded*

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

20 **12 Meaning of *e-cigarette accessory***

21 *Basic definition*

- 22 (1) An *e-cigarette accessory* means any of the following:
- 23 (a) a cartridge, capsule or other vessel designed or intended to
24 contain a liquid, gas, aerosol, vapour or other substance for
25 use in an e-cigarette;
- 26 (b) such a liquid, gas, aerosol, vapour or other substance
27 (whether or not containing nicotine or tobacco);
- 28 (c) a heating element designed or intended for use in an
29 e-cigarette;
- 30 (d) a battery specifically designed or intended for use in an
31 e-cigarette.

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 1.2 Interpretation

Division 2 Key concepts for this Act

Section 12

- 1 *E-cigarette accessories may be prescribed*
- 2 (2) The regulations may prescribe a kind of item to be an *e-cigarette*
- 3 *accessory* for the purposes of this Act.
- 4 (3) Before regulations are made under subsection (2), the Minister
- 5 must be satisfied:
- 6 (a) that the item is designed or intended for use with or for the
- 7 human consumption or use of e-cigarette products; and
- 8 (b) that making the proposed regulations will advance either or
- 9 both of the following objects of this Act:
- 10 (i) improving public health by discouraging smoking and
- 11 the use of regulated tobacco items (see paragraph
- 12 3(1)(a));
- 13 (ii) addressing the health risks posed by vaping and the use
- 14 of e-cigarette products (see paragraph 3(1)(c)).
- 15 *Certain registered therapeutic goods excluded*
- 16 (4) An *e-cigarette accessory* does not include a product that is entered
- 17 on the Australian Register of Therapeutic Goods maintained under
- 18 the Therapeutic Goods Act.

EXPOSURE DRAFT

Preliminary **Chapter 1**
Interpretation **Part 1.2**
Other interpretation provisions **Division 3**

Section 13

1 **Division 3—Other interpretation provisions**

2 **13 References to different kinds of tobacco products**

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

- 5 (a) different brand names; or
6 (b) different variant names.

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

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

14 **14 References to manufacturers, importers, distributors and**
15 **retailers**

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

21 **15 References to an *offer* to sell or supply**

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

- 25 (a) offering the item or product for sale or supply on the internet
26 or from physical premises; and
27 (b) exposing, displaying or advertising the item or product for
28 sale or supply; and
29 (c) making the item or product available for sale or supply even
30 if it is not visible to the public.

EXPOSURE DRAFT

Chapter 1 Preliminary

Part 1.2 Interpretation

Division 3 Other interpretation provisions

Section 16

1 **16 Tobacco products—rebuttable presumption of offer for retail**
2 **sale**

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

- 5 (a) an amount of the tobacco product is on physical premises
6 from which regulated tobacco items are sold by way of retail
7 sale; and
8 (b) the amount exceeds the amount (if any) prescribed by
9 regulations made for the purposes of this paragraph.

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

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.1 Introduction

Section 17

1

2

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of tobacco advertisements **Part 2.2**

Offence and civil penalty **Division 1**

Section 18

1 **Part 2.2—Prohibition of tobacco advertisements**

2 **Division 1—Offence and civil penalty**

3 **18 Prohibition on publishing tobacco advertisements**

4 (1) A person contravenes this subsection if:

- 5 (a) the person publishes material, or authorises or causes
6 material to be published; and
7 (b) the material is a tobacco advertisement.

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

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

11 *Exception for permitted publications*

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

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

17 *Fault-based offence*

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

20 Penalty:

- 21 (a) for an individual—2,000 penalty units; and
22 (b) for a body corporate—20,000 penalty units.

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 1 Offence and civil penalty

Section 18

1

Geographical application

2

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

3

4

5

Strict liability offence

6

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

7

8

Penalty:

9

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

10

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

11

Civil penalty provision

12

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

13

14

Civil penalty:

15

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

16

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

17

Defence for individual publication

18

- (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:

19

20

21

(a) the defendant published the tobacco advertisement:

22

(i) as an individual; and

23

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

24

(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

25

26

27

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

28

29

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 2 Meaning of tobacco advertisement

Section 19

1 **Division 2—Meaning of tobacco advertisement**

2 **19 Meaning of *tobacco advertisement***

3 *Basic definition*

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

7 (a) smoking;

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

9 *Tobacco advertisements—elements*

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

13 *Tobacco advertisements—additional purposes or effects*

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

17 *Tobacco advertisements—rebuttable presumption*

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

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

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

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of tobacco advertisements **Part 2.2**

Meaning of tobacco advertisement **Division 2**

Section 19

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

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

4 *Tobacco advertisements—names of tobacco manufacturers,*
5 *importers etc.*

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

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

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

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

15 *Tobacco advertisements may be prescribed*

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

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

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

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

23 (i) improving public health by discouraging smoking and
24 the use of regulated tobacco items (see paragraph
25 3(1)(a));

26 (ii) giving effect to Australia's obligations under the
27 Convention on Tobacco Control (see paragraph
28 3(1)(b)); and

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 3 Tobacco advertisements—exceptions

Section 20

1 **Division 3—Tobacco advertisements—exceptions**

2 **20 Exception—labelling and packaging**

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

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

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

14 **21 Exception—standard business documents**

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

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

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

24 **22 Exception—business signage**

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of tobacco advertisements **Part 2.2**

Tobacco advertisements—exceptions **Division 3**

Section 23

- 1 (2) Business signage satisfies this subsection if it does no more than
2 state one or more of the following:
- 3 (a) the name and contact details of the manufacturer, distributor,
4 importer or retailer that occupies the business premises;
- 5 (b) the nature of the business;
- 6 (c) the location of the business.
- 7 (3) Despite subsection (1), a communication, recommendation or
8 action in relation to business signage may constitute a tobacco
9 advertisement.

23 Exception—notice of availability of regulated tobacco items

- 11 A statement that regulated tobacco items, or that such items of a
12 particular kind, are available from a manufacturer, importer,
13 distributor or retailer does not, of itself, constitute a tobacco
14 advertisement if the statement does not:
- 15 (a) use the brand name or variant name of any particular kind of
16 tobacco product; or
- 17 (b) contain anything that would enable a particular regulated
18 tobacco item, or a range of such items, to be identified.

24 Exception—consumer matters

- 20 None of the following communications, of themselves, constitute a
21 tobacco advertisement:
- 22 (a) recalling a regulated tobacco item;
- 23 (b) disclosing a defect in, or a dangerous characteristic of, a
24 regulated tobacco item;
- 25 (c) disclosing circumstances in which the use of a regulated
26 tobacco item is or may be dangerous;
- 27 (d) disclosing procedures for the appropriate disposal of a
28 regulated tobacco item;
- 29 (e) informing people about their consumer rights in relation to
30 regulated tobacco items.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of tobacco advertisements **Part 2.2**

Tobacco advertisements—exceptions **Division 3**

Section 28

- 1 (a) a statement made in the work to disclose the author’s conflict
2 of interest in relation to the work;
- 3 (b) a statement made in the work that does no more than
4 acknowledge a contribution made to the author in connection
5 with the preparation of the work.
- 6 Note: Section 37 prohibits entering into a tobacco sponsorship.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 4 Meaning of publish a tobacco advertisement

Section 29

1 **Division 4—Meaning of publish a tobacco advertisement**

2 **29 Meaning of *publish* a tobacco advertisement**

3 *Basic definition*

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

8 *Tobacco advertisements included in things sold etc.*

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

13 *Targeted online advertising*

- 14 (3) Without limiting subsection (1), a tobacco advertisement is taken
15 to be made available to, or accessible by, the public or a section of
16 the public if:
17 (a) the advertisement is made available to, or accessible by, a
18 person using the internet; and
19 (b) the advertisement is made available to that person because of:
20 (i) the use of an algorithm; or
21 (ii) the person's online activity; or
22 (iii) any other characteristic of that person as an internet end
23 user.

24 *Private events or functions*

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of tobacco advertisements **Part 2.2**
Meaning of publish a tobacco advertisement **Division 4**

Section 29

- 1 (a) the advertisement is made available to, or accessible by, a
2 person attending a private event or function to which access
3 is restricted; and
4 (b) the purpose of the event or function is or includes the
5 promotion of:
6 (i) smoking; or
7 (ii) a regulated tobacco item or the use of such an item; or
8 (iii) a manufacturer, importer, distributor or retailer of such
9 an item.
- 10 (5) In determining whether a tobacco advertisement is made available
11 to, or accessible by, the public or a section of the public at a private
12 event or function, it is immaterial whether or not payment or other
13 consideration is received from any person in relation to the event
14 or function.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 5 Tobacco advertisements—permitted publications

Section 30

1 **Division 5—Tobacco advertisements—permitted**
2 **publications**

3 **30 Permitted publication—physical premises point of sale**

4 *Tobacco advertisements complying with State and Territory law*

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

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

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

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

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

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

19 *Particular physical premises*

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

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

25 (b) a vending machine;

26 (c) a motor vehicle.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of tobacco advertisements **Part 2.2**
Tobacco advertisements—permitted publications **Division 5**

Section 31

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:

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 5 Tobacco advertisements—permitted publications

Section 32

- 1 (i) there is no law of the State or Territory that regulates
2 the advertising of regulated tobacco items on the
3 internet; or
4 (ii) there is such a law, but it does not contain any
5 provisions expressly dealing with the publication of
6 tobacco advertisements on the internet that enable a
7 person accessing the advertisement to purchase a
8 regulated tobacco item; and
9 (e) the publication of the advertisement complies with the
10 regulations (if any) made for the purposes of this paragraph.
- 11 (4) Regulations made for the purposes of paragraph (3)(e) may,
12 without limitation, prescribe matters in relation to any of the
13 following:
- 14 (a) the webpage, or the website, on which tobacco
15 advertisements are displayed;
16 (b) the size, content, format and location of tobacco
17 advertisements;
18 (c) without limiting paragraph (b)—the inclusion in or with
19 tobacco advertisements of any of the following:
20 (i) health warnings;
21 (ii) health promotion inserts;
22 (iii) warnings about age restrictions on the retail sale of
23 regulated tobacco items;
24 (iv) information about any fees, taxes and charges payable
25 in relation to regulated tobacco items;
26 (d) age restricted access systems for access to tobacco
27 advertisements.

28 **32 Permitted publication—trade communications**

- 29 (1) A person may publish a tobacco advertisement if the person makes
30 the advertisement available to, or accessible by, a group of people
31 all of whom are involved in the manufacture, importation,
32 distribution or sale of regulated tobacco items.
- 33 (2) Subsection (1) applies only if:

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of tobacco advertisements **Part 2.2**
Tobacco advertisements—permitted publications **Division 5**

Section 33

- 1 (a) the tobacco advertisement is not available to, or accessible
2 by, persons other than those involved in the manufacture,
3 importation, distribution or sale of regulated tobacco items;
4 and
5 (b) the advertisement does not, apart from the fact of the
6 advertisement, actively promote smoking or the use of
7 regulated tobacco items; and
8 (c) in a case where the advertisement relates to the sale or supply
9 of a particular regulated tobacco item—the advertisement is
10 limited to factual information about the item and the terms of
11 the sale or supply of the item.

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

14 **33 Permitted publication—telecommunications and online service** 15 **providers**

16 A person may publish a tobacco advertisement if:

- 17 (a) the person is a carrier and, in publishing the tobacco
18 advertisement, the person is acting solely in the person's
19 capacity as a carrier; or
20 (b) the person is a carriage service provider and, in publishing
21 the tobacco advertisement, the person is acting solely in the
22 person's capacity as a carriage service provider; or
23 (c) the person is an internet service provider and, in publishing
24 the tobacco advertisement, the person is acting solely in the
25 person's capacity as an internet service provider; or
26 (d) the person is an Australian hosting service provider and, in
27 publishing the tobacco advertisement, the person is acting
28 solely in the person's capacity as Australian hosting service
29 provider.

30 **34 Permitted publication—periodicals printed outside Australia**

31 A person may publish a tobacco advertisement if:

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.2 Prohibition of tobacco advertisements

Division 5 Tobacco advertisements—permitted publications

Section 35

- 1 (b) the periodical is not principally intended for distribution or
2 use in Australia; and
3 (c) the conduct constituting publication of the advertisement
4 consists of no more than selling or supplying, or offering to
5 sell or supply, the periodical.

6 **35 Permitted publication—compliance activities**

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

- 9 (a) a request by, or a requirement of, an authorised officer in
10 relation to administering or enforcing this Act (including
11 exercising any function or power under the Regulatory
12 Powers Act as it applies to this Act); or
13 (b) any other law of the Commonwealth or any law of a State or
14 Territory.

15 **36 Permitted publication—advertisements during aircraft flight**

- 16 (1) A person may publish a tobacco advertisement if:
17 (a) the person is operating the flight of an aircraft; and
18 (b) the person publishes the advertisement in the aircraft during
19 the flight.
20 (2) Subsection (1) does not apply if the flight begins at a place in
21 Australia and is intended to end at another place in Australia.
22 (3) For the purposes of subsection (1), each sector of a flight of an
23 aircraft is taken to be a separate flight.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of tobacco sponsorships **Part 2.3**

Offence and civil penalty **Division 1**

Section 37

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).

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.3 Prohibition of tobacco sponsorships

Division 1 Offence and civil penalty

Section 37

1

Strict liability offence

2

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

3

4

Penalty:

5

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

6

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

7

Civil penalty provision

8

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

9

10

Civil penalty:

11

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

12

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of tobacco sponsorships **Part 2.3**

Meaning of tobacco sponsorship **Division 2**

Section 38

1 **Division 2—Meaning of tobacco sponsorship**

2 **38 Meaning of *tobacco sponsorship***

3 *Basic definition*

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

8 (a) smoking;

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

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

12 *Specific instances of tobacco sponsorship*

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

17 (a) is in writing; or

18 (b) is express or implied; or

19 (c) is legally binding; or

20 (d) is publicly acknowledged.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.3 Prohibition of tobacco sponsorships

Division 3 Tobacco sponsorships—exceptions

Section 39

1 **Division 3—Tobacco sponsorships—exceptions**

2 **39 Exception—political donations and electoral expenditure**

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

6 (a) a gift;

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

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

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

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

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

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

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

22 **40 Exception—statements by authors**

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette advertisements **Part 2.4**

Offence and civil penalty **Division 1**

Section 41

1 **Part 2.4—Prohibition of e-cigarette advertisements**

2 **Division 1—Offence and civil penalty**

3 **41 Prohibition on publishing e-cigarette advertisements**

4 (1) A person contravenes this subsection if:

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

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

8 (c) any of the following apply:

9 (i) the person is a constitutional corporation;

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

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

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

17 (v) the publication is made in a Territory.

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

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

21 *Exception for permitted publications*

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

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

27 *Fault-based offence*

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 1 Offence and civil penalty

Section 41

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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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette advertisements **Part 2.4**

Offence and civil penalty **Division 1**

Section 41

- 1 (ii) on the defendant's own initiative; and
2 (b) the publication was not in the course of, or in any way
3 associated with, the manufacture, importation, distribution or
4 sale of e-cigarette products by any person; and
5 (c) the defendant did not receive any direct or indirect benefit
6 (whether financial or not) from any person for publishing the
7 advertisement.

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 2 Meaning of e-cigarette advertisement

Section 42

1 **Division 2—Meaning of e-cigarette advertisement**

2 **42 Meaning of *e-cigarette advertisement***

3 *Basic definition*

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

- 7 (a) vaping;
8 (b) an e-cigarette product or the use of such a product.

9 *E-cigarette advertisements may be prescribed*

10 (2) The regulations may prescribe a kind of material to be an
11 *e-cigarette advertisement* for the purposes of this Act.

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

- 14 (a) that it is appropriate to do so; and
15 (b) that making the proposed regulations will advance either or
16 both of the following objects of this Act:
17 (i) improving public health by discouraging smoking and
18 the use of regulated tobacco items (see paragraph
19 3(1)(a));
20 (ii) addressing the health risks posed by vaping and the use
21 of e-cigarette products (see paragraph 3(1)(c)); and
22 (c) that making the proposed regulations would not be
23 inconsistent with Division 3 (about exceptions to e-cigarette
24 advertisements).

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette advertisements **Part 2.4**

E-cigarette advertisements—exceptions **Division 3**

Section 43

1 **Division 3—E-cigarette advertisements—exceptions**

2 **43 Exception—labelling and wrapping**

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

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

9 **44 Exception—standard business documents**

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

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

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

19 **45 Exception—business signage**

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

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

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

28 (b) the nature of the business;

29 (c) the location of the business.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 3 E-cigarette advertisements—exceptions

Section 46

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

46 Exception—notice of availability of e-cigarette products

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

- 9 (a) use the name of any particular e-cigarette product or range of
10 products; or
11 (b) contain anything that would enable a particular e-cigarette
12 product, or a range of such products, to be identified.

47 Exception—consumer matters

14 None of the following communications, of themselves, constitute
15 an e-cigarette advertisement:

- 16 (a) recalling an e-cigarette product;
17 (b) disclosing a defect in, or a dangerous characteristic of, an
18 e-cigarette product;
19 (c) disclosing circumstances in which the use of an e-cigarette
20 product is or may be dangerous;
21 (d) disclosing procedures for the appropriate disposal of an
22 e-cigarette product;
23 (e) informing people about their consumer rights in relation to
24 e-cigarette products.

48 Exception—communications about government or political matters

- 27 (1) A communication does not constitute an e-cigarette advertisement
28 to the extent that it is a communication about government or
29 political matters.
30 (2) The use in such a communication of the whole name of a
31 manufacturer, importer, distributor or retailer of e-cigarette

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette advertisements **Part 2.4**

E-cigarette advertisements—exceptions **Division 3**

Section 49

1 products does not, of itself, make the communication constitute an
2 e-cigarette advertisement.

3 **49 Exception—artistic works and public interest expression**

4 None of the following constitutes an e-cigarette advertisement:

- 5 (a) the performance, exhibition or distribution, in good faith, of
6 an artistic work;
- 7 (b) a communication made for any genuine academic,
8 educational or scientific purpose or any other genuine
9 purpose in the public interest.

10 **50 Exception—journalism**

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

- 14 (a) the public interest in the publication of the material
15 outweighs any likely adverse effect of the publication on
16 achieving the objects of this Act; and
- 17 (b) the publication is made by a person working in a professional
18 capacity as a qualified journalist.

19 **51 Exception—disclosures and acknowledgements by authors**

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

- 23 (a) a statement made in the work to disclose the author's conflict
24 of interest in relation to the work;
- 25 (b) a statement made in the work that does no more than
26 acknowledge a contribution made to the author in connection
27 with the preparation of the work.

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 3 E-cigarette advertisements—exceptions

Section 52

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.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette advertisements **Part 2.4**

E-cigarette advertisements—exceptions **Division 3**

Section 54

1 **54 Exception—permitted use of restricted or prohibited**
2 **representations under the Therapeutic Goods Act**

3 *Scope*

- 4 (1) Subsection (2) applies in relation to an e-cigarette product if:
5 (a) the product is a therapeutic good within the meaning of the
6 Therapeutic Goods Act; and
7 (b) the Secretary has granted permission, under section 42DK of
8 that Act, to use one or more of the following in specified
9 advertisements about the product:
10 (i) a specified restricted representation;
11 (ii) a specified prohibited representation;
12 (iii) another representation.

13 *Exception*

- 14 (2) An advertisement for the e-cigarette product does not constitute an
15 e-cigarette advertisement to the extent that:
16 (a) the advertisement is of a kind specified in the permission;
17 and
18 (b) the advertisement is or contains any of the following
19 representations allowed by the permission:
20 (i) a specified restricted representation;
21 (ii) a specified prohibited representation;
22 (iii) another representation; and
23 (c) the advertisement complies with any conditions specified in
24 the permission.
- 25 (3) Expressions used in this section that are defined for the purposes of
26 the Therapeutic Goods Act have the same meaning in this section
27 as they have in that Act.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 4 Meaning of publish an e-cigarette advertisement

Section 55

1 **Division 4—Meaning of publish an e-cigarette**
2 **advertisement**

3 **55 Meaning of *publish* an e-cigarette advertisement**

4 *Basic definition*

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

9 *E-cigarette advertisements included in things sold etc.*

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

15 *Targeted online advertising*

16 (3) Without limiting subsection (1), an e-cigarette advertisement is
17 taken to be made available to, or accessible by, the public or a
18 section of the public if:
19 (a) the advertisement is made available to, or accessible by, a
20 person using the internet; and
21 (b) the advertisement is made available to that person because of:
22 (i) the use of an algorithm; or
23 (ii) the person's online activity; or
24 (iii) any other characteristic of that person as an internet end
25 user.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of e-cigarette advertisements **Part 2.4**
Meaning of publish an e-cigarette advertisement **Division 4**

Section 55

- 1 *Private events or functions*
- 2 (4) Without limiting subsection (1), an e-cigarette advertisement is
- 3 taken to be made available to, or accessible by, the public or a
- 4 section of the public if:
- 5 (a) the advertisement is made available to, or accessible by, a
- 6 person attending a private event or function to which access
- 7 is restricted; and
- 8 (b) the purpose of the event or function is or includes the
- 9 promotion of:
- 10 (i) vaping; or
- 11 (ii) an e-cigarette product or the use of such a product; or
- 12 (iii) a manufacturer, importer, distributor or retailer of such a
- 13 product.
- 14 (5) In determining whether an e-cigarette advertisement is made
- 15 available to, or accessible by, the public or a section of the public
- 16 at a private event or function, it is immaterial whether or not
- 17 payment or other consideration is received from any person in
- 18 relation to the event or function.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 5 E-cigarette advertisements—permitted publications

Section 56

1 **Division 5—E-cigarette advertisements—permitted**
2 **publications**

3 **56 Permitted publication—physical premises point of sale**

4 *E-cigarette advertisements complying with State and Territory law*

- 5 (1) A person may publish an e-cigarette advertisement if:
6 (a) the person displays the e-cigarette advertisement at physical
7 premises where e-cigarette products are offered for retail
8 sale; and
9 (b) a law of the State or Territory in which the premises are
10 located regulates the advertising of e-cigarette products; and
11 (c) that law contains provisions expressly dealing with the
12 display of advertisements for e-cigarette products at or on
13 premises where such items are offered for retail sale; and
14 (d) the display of the advertisement complies with those
15 provisions; and
16 (e) the e-cigarette advertisement is not visible from outside the
17 premises.

18 *Particular physical premises*

- 19 (2) Without limiting subsection (1), each of the following is taken to
20 be physical premises for the purposes of that subsection:
21 (a) a kiosk, market stall or other place that has fixed boundaries,
22 whether or not those boundaries have walls, where goods are
23 offered for retail sale;
24 (b) a vending machine;
25 (c) a motor vehicle.

26 *E-cigarette advertisements complying with Commonwealth*
27 *regulations*

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

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Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of e-cigarette advertisements **Part 2.4**
E-cigarette advertisements—permitted publications **Division 5**

Section 57

- 1 (a) the person displays the e-cigarette advertisement at physical
2 premises where e-cigarette products are offered for retail
3 sale; and
4 (b) either:
5 (i) there is no law of the State or Territory in which the
6 premises are located that regulates the advertising of
7 e-cigarette products; or
8 (ii) there is such a law, but it does not contain any
9 provisions expressly dealing with the display of
10 advertisements for e-cigarette products at or on such
11 premises; and
12 (c) the display of the e-cigarette advertisement complies with the
13 requirements (if any) prescribed by regulations made for the
14 purposes of this paragraph.
- 15 (4) Regulations made for the purposes of paragraph (3)(c) may,
16 without limitation, prescribe requirements as to any of the
17 following:
18 (a) the size, content, format and location of e-cigarette
19 advertisements;
20 (b) without limiting paragraph (a)—the inclusion in or with
21 e-cigarette advertisements of any of the following:
22 (i) warnings about the health consequences of using
23 e-cigarette products;
24 (ii) warnings about age restrictions on the retail sale of
25 e-cigarette products;
26 (iii) information about any fees, taxes and charges payable
27 in relation to e-cigarette products.

28 **57 Permitted publication—online point of sale**

29 *E-cigarette advertisements complying with State and Territory law*

- 30 (1) A person may publish an e-cigarette advertisement if:
31 (a) the person makes the advertisement available on, or
32 accessible using, the internet; and

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Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 5 E-cigarette advertisements—permitted publications

Section 57

- 1 (b) the advertisement is available to, or accessible by, the public,
2 or a section of the public, in a State or Territory; and
3 (c) the advertisement enables a person accessing the
4 advertisement to purchase an e-cigarette product; and
5 (d) the publication of the advertisement is covered by
6 subsection (2).

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

- 9 (a) a law of the State or Territory regulates the advertising of
10 e-cigarette products on the internet; and
11 (b) that law contains provisions expressly dealing with the
12 publication of e-cigarette advertisements on the internet that
13 enable a person accessing the advertisement to purchase an
14 e-cigarette product; and
15 (c) the publication of the advertisement complies with those
16 provisions.

17 *E-cigarette advertisements complying with Commonwealth*
18 *regulations*

- 19 (3) A person may publish an e-cigarette advertisement if:
20 (a) the person makes the advertisement available on, or
21 accessible using, the internet; and
22 (b) the advertisement is accessible by the public, or a section of
23 the public, in a State or Territory; and
24 (c) the advertisement enables a person accessing the e-cigarette
25 advertisement to purchase an e-cigarette product; and
26 (d) either:
27 (i) there is no law of the State or Territory that regulates
28 the advertising of e-cigarette products on the internet; or
29 (ii) there is such a law, but it does not contain any
30 provisions expressly dealing with the publication of
31 e-cigarette advertisements on the internet that enable a
32 person accessing the advertisement to purchase an
33 e-cigarette product; and

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of e-cigarette advertisements **Part 2.4**
E-cigarette advertisements—permitted publications **Division 5**

Section 58

- 1 (e) the publication of the advertisement complies with the
2 regulations (if any) made for the purposes of this paragraph.
- 3 (4) Regulations made for the purposes of paragraph (3)(e) may,
4 without limitation, prescribe matters in relation to any of the
5 following:
- 6 (a) the webpage, or the website, on which e-cigarette
7 advertisements are displayed;
- 8 (b) the size, content, format and location of e-cigarette
9 advertisements;
- 10 (c) without limiting paragraph (b)—the inclusion in or with
11 e-cigarette advertisements of any of the following:
- 12 (i) warnings about the health consequences of using
13 e-cigarette products;
- 14 (ii) warnings about age restrictions on the retail sale of
15 e-cigarette products;
- 16 (iii) information about any fees, taxes and charges payable
17 in relation to e-cigarette products;
- 18 (d) age restricted access systems for access to e-cigarette
19 advertisements.

58 Permitted publication—trade communications

- 20
- 21 (1) A person may publish an e-cigarette advertisement if the person
22 makes the advertisement available to, or accessible by, a group of
23 people all of whom are involved in the manufacture, importation,
24 distribution or sale of e-cigarette products.
- 25 (2) Subsection (1) applies only if:
- 26 (a) the e-cigarette advertisement is not available to, or accessible
27 by, persons other than those involved in the manufacture,
28 importation, distribution or sale of e-cigarette products; and
- 29 (b) the advertisement does not, apart from the fact of the
30 advertisement, actively promote vaping or the use of
31 e-cigarette products; and
- 32 (c) in a case where the advertisement relates to the sale or supply
33 of a particular e-cigarette product—the advertisement is

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.4 Prohibition of e-cigarette advertisements

Division 5 E-cigarette advertisements—permitted publications

Section 59

1 limited to factual information about the product and the terms
2 of the sale or supply of the product.

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

5 **59 Permitted publication—telecommunications and online service** 6 **providers**

7 A person may publish an e-cigarette advertisement if:

- 8 (a) the person is a carrier and, in publishing the e-cigarette
9 advertisement, the person is acting solely in the person's
10 capacity as a carrier; or
11 (b) the person is a carriage service provider and, in publishing
12 the e-cigarette advertisement, the person is acting solely in
13 the person's capacity as a carriage service provider; or
14 (c) the person is an internet service provider and, in publishing
15 the e-cigarette advertisement, the person is acting solely in
16 the person's capacity as an internet service provider; or
17 (d) the person is Australian hosting service provider and, in
18 publishing the e-cigarette advertisement, the person is acting
19 solely in the person's capacity as Australian hosting service
20 provider.

21 **60 Permitted publication—periodicals printed outside Australia**

22 A person may publish an e-cigarette advertisement if:

- 23 (a) the advertisement is contained in a hard copy periodical
24 printed outside Australia; and
25 (b) the periodical is not principally intended for distribution or
26 use in Australia; and
27 (c) the conduct constituting publication of the advertisement
28 consists of no more than selling or supplying, or offering to
29 sell or supply, the periodical.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**
Prohibition of e-cigarette advertisements **Part 2.4**
E-cigarette advertisements—permitted publications **Division 5**

Section 61

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.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.5 Prohibition of e-cigarette sponsorships

Division 1 Offence and civil penalty

Section 64

1 **Part 2.5—Prohibition of e-cigarette sponsorships**

2 **Division 1—Offence and civil penalty**

3 **64 Prohibition on entering into e-cigarette sponsorships**

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

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

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

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

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

13 (c) any of the following apply:

14 (i) the first person is a constitutional corporation;

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

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

19 (iv) the conduct takes place in a Territory.

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

22 *Fault-based offence*

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

25 Penalty:

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

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

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

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

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette sponsorships **Part 2.5**

Offence and civil penalty **Division 1**

Section 64

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

2 *Geographical application*

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

6 *Strict liability offence*

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

9 Penalty:

- 10 (a) for an individual—60 penalty units; and
11 (b) for a body corporate—600 penalty units.

12 *Civil penalty provision*

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

15 Civil penalty:

- 16 (a) for an individual—2,000 penalty units; and
17 (b) for a body corporate—20,000 penalty units.

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions

Part 2.5 Prohibition of e-cigarette sponsorships

Division 2 Meaning of e-cigarette sponsorship

Section 65

1 **Division 2—Meaning of e-cigarette sponsorship**

2 **65 Meaning of *e-cigarette sponsorship***

3 *Basic definition*

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

- 8 (a) vaping;
9 (b) an e-cigarette product or the use of such a product.

10 Note: In some circumstances, an e-cigarette sponsorship may also constitute
11 an e-cigarette advertisement.

12 *Specific instances of e-cigarette sponsorship*

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

- 17 (a) is in writing; or
18 (b) is express or implied; or
19 (c) is legally binding; or
20 (d) is publicly acknowledged.

EXPOSURE DRAFT

Advertising and sponsorship prohibitions **Chapter 2**

Prohibition of e-cigarette sponsorships **Part 2.5**

E-cigarette sponsorships—exceptions **Division 3**

Section 66

1 **Division 3—E-cigarette sponsorships—exceptions**

2 **66 Exception—political donations and electoral expenditure**

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

6 (a) a gift;

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

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

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

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

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

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

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

22 **67 Exception—statements by authors**

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

EXPOSURE DRAFT

Chapter 2 Advertising and sponsorship prohibitions
Part 2.6 Other matters

Section 68

1 **Part 2.6—Other matters**
2

3 **68 No action for failing to publish prohibited advertisement**

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

1 **Chapter 3—Tobacco product requirements**

2 **Part 3.1—Introduction**
3

4 **69 Simplified outline of this Chapter**

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

- 8 (a) the retail packaging of tobacco products; and
9 (b) prohibiting or limiting the use of certain words or
10 characters in relation to regulated tobacco items; and
11 (c) the appearance and contents of tobacco products; and
12 (d) the standards that apply to tobacco products.

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

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

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

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.2 Key concepts—tobacco product requirements

Section 70

1 **Part 3.2—Key concepts—tobacco product**
2 **requirements**
3

4 **70 Meaning of *retail packaging* of a tobacco product**

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

- 6 (a) any container for retail sale in which the tobacco product is
7 directly placed; or
8 (b) any container for retail sale that contains a smaller container
9 in which the tobacco product is directly placed; or
10 (c) any plastic or other wrapper that covers a container
11 mentioned in paragraph (a) or (b); or
12 (d) any plastic or other wrapper that covers the tobacco product
13 when the product is offered for retail sale; or
14 (e) any insert that is placed inside the packaging of the tobacco
15 product mentioned in any of paragraphs (a) to (d); or
16 (f) any insert that is affixed or otherwise attached to the
17 packaging of the tobacco product mentioned in any of
18 paragraphs (a) to (d); or
19 (g) any lining of a container mentioned in paragraph (a).

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

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

- 23 (a) section 73 (about the physical features of the retail packaging of
24 tobacco products);
25 (b) section 74 (about the colour and finish of the retail packaging of
26 tobacco products).

27 **71 Meaning of *packages* a tobacco product for retail sale**

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

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

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Section 72

- 1 (b) the person places a container, in which the tobacco product
2 has been directly placed, into a larger container for retail sale;
3 or
4 (c) the person covers the retail packaging of the tobacco product
5 (within the meaning of paragraph (a) or (b) of the definition
6 of **retail packaging** in section 70) with a plastic or other
7 wrapper; or
8 (d) the person covers the tobacco product with a plastic or other
9 wrapper for retail sale; or
10 (e) the person places an insert inside the retail packaging of the
11 tobacco product (within the meaning of any of paragraphs (a)
12 to (d) of the definition of **retail packaging** in section 70); or
13 (f) the person affixes or otherwise attaches an insert to the retail
14 packaging of the tobacco product (within the meaning of any
15 of paragraphs (a) to (d) of the definition of **retail packaging**
16 in section 70); or
17 (g) the person places a lining in a container mentioned in
18 paragraph (a) in which the tobacco product is or will be
19 directly placed.

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

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

24 **72 Meaning of *prohibited term***

- 25 (1) A term listed in column 1 of an item of the following table,
26 examples of which are given in column 2 of the item, is a
27 **prohibited term** in relation to regulated tobacco items.
28

Prohibited terms—regulated tobacco items		
Item	Column 1	Column 2
	Prohibited term	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

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Chapter 3 Tobacco product requirements

Part 3.2 Key concepts—tobacco product requirements

Section 72

Prohibited terms—regulated tobacco items

Item	Column 1 Prohibited term	Column 2 Examples
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

1

2

Prohibited terms may be prescribed

3

(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.

4

5

6

(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:

7

8

9

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

10

11

12

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

13

14

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

15

16

Exceptions

17

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

18

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**
Key concepts—tobacco product requirements **Part 3.2**

Section 72

- 1 (6) A word or mark is not a *prohibited term* to the extent that the word
2 or mark forms part of, and is used in, any of the following:
3 (a) a health warning;
4 (b) a health promotion insert;
5 (c) a mandatory marking.

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.3 Tobacco product requirements

Division 1 Plain packaging requirements

Section 73

1 **Part 3.3—Tobacco product requirements**

2 **Division 1—Plain packaging requirements**

3 **73 Plain packaging—physical features**

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

7 **74 Plain packaging—colour and finish**

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

11 *Default colour for retail packaging*

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

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

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

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

21 (4) The following are not required to be the colour known as Pantone
22 448C:

23 (a) health warnings;

24 (b) mandatory markings;

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

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**

Tobacco product requirements **Part 3.3**

Plain packaging requirements **Division 1**

Section 75

1 **75 Plain packaging—standardisation**

2 *Standardisation measures*

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

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

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

10 *Exception—shisha tobacco products*

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

13 **76 Plain packaging—prohibited terms, trade marks and other**
14 **marks**

15 *No prohibited terms on retail packaging*

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

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

19 *No trade marks or other marks on retail packaging*

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

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

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

25 *Permitted trade marks and marks*

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

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Chapter 3 Tobacco product requirements

Part 3.3 Tobacco product requirements

Division 1 Plain packaging requirements

Section 76

- 1 (a) the brand name and any variant name for the tobacco
2 product;
3 (b) health warnings;
4 (c) mandatory markings;
5 (d) any other trade mark or mark permitted by regulations (if
6 any) made for the purposes of this paragraph.

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

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

13 *Restrictions*

- 14 (5) Any trade mark or mark that is permitted under this Act to appear
15 on the retail packaging of tobacco products must not:
16 (a) be false, misleading, deceptive or likely to create an
17 erroneous impression about the tobacco product's
18 characteristics, health effects, risks or emissions; or
19 (b) directly or indirectly create an impression that the tobacco
20 product is less harmful than other tobacco products; or
21 (c) wholly or partly obscure any health warning or mandatory
22 marking; or
23 (d) constitute a tobacco advertisement; or
24 (e) provide access to a tobacco advertisement.

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

27 *Section not to apply to wrappers*

- 28 (6) This section does not apply to a plastic or other wrapper that
29 covers:
30 (a) the retail packaging of a tobacco product; or
31 (b) a tobacco product that is for retail sale.

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

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**

Tobacco product requirements **Part 3.3**

Plain packaging requirements **Division 1**

Section 77

77 Plain packaging—health warnings

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

5 *Chief Medical Officer to recommend health warnings*

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

10 *Commencement of regulations prescribing new health warnings*

- 11 (3) If:
12 (a) regulations are made under subsection (1); and
13 (b) those regulations are not the first such regulations made
14 under that subsection;
15 the regulations must commence no earlier than 6 months after the
16 day the regulations are made.

78 Plain packaging—mandatory markings

17 *Mandatory markings must appear on retail packaging*

- 18
- 19 (1) The regulations may prescribe markings that must appear on the
20 retail packaging of tobacco products.
- 21 (2) Mandatory markings must not, wholly or partly, obscure any health
22 warning on the retail packaging of tobacco products.

23 *Section not to apply to wrappers*

- 24 (3) This section does not apply to a plastic or other wrapper that
25 covers:
26 (a) the retail packaging of a tobacco product; or
27 (b) a tobacco product that is for retail sale.

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.3 Tobacco product requirements

Division 1 Plain packaging requirements

Section 79

1 **79 Plain packaging—wrappers**

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

5 **80 Plain packaging—prohibited tobacco product accessories**

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

9 **81 Plain packaging—inserts and onserts**

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

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

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

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

21 *Chief Medical Officer to recommend health promotion inserts*

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

26 *Commencement of regulations prescribing new health promotion*
27 *inserts*

28 (4) If:

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Tobacco product requirements **Chapter 3**

Tobacco product requirements **Part 3.3**

Plain packaging requirements **Division 1**

Section 82

- 1 (a) regulations are made under paragraph (1)(a) prescribing
2 health promotion inserts; and
3 (b) those regulations are not the first such regulations made
4 under that paragraph;
5 the regulations must commence no earlier than 6 months after the
6 day the regulations are made.

7 **82 Retail packaging not to produce noise or smell**

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

10 **83 Retail packaging must not change after retail sale**

- 11 The retail packaging of tobacco products must not include any
12 features designed to change the packaging after retail sale,
13 including (without limitation) the following:
14 (a) heat activated inks;
15 (b) inks or embellishments designed to appear gradually over
16 time;
17 (c) inks that appear fluorescent in certain light;
18 (d) panels designed to be scratched or rubbed to reveal an image
19 or text;
20 (e) removable tabs;
21 (f) fold-out panels;
22 (g) any other feature prescribed by regulations made for the
23 purposes of this paragraph.

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.3 Tobacco product requirements

Division 2 Naming requirements

Section 84

1 **Division 2—Naming requirements**

2 **84 Prohibited terms—brand names and variant names**

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

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**
Tobacco product requirements **Part 3.3**
Appearance, physical features and content requirements **Division 3**

Section 85

1 **Division 3—Appearance, physical features and content**
2 **requirements**

3 **85 Tobacco products—appearance and physical features**

4 *Prohibited terms*

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

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

7 *Trade marks and other marks*

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

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

12 *Appearance requirements*

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

16 *Physical features requirements*

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

20 **86 Tobacco products—contents**

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

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

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.3 Tobacco product requirements

Division 3 Appearance, physical features and content requirements

Section 87

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

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

5 **87 Tobacco products—prohibited devices**

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

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**

Tobacco product requirements **Part 3.3**

Tobacco product standards **Division 4**

Section 88

1 **Division 4—Tobacco product standards**

2 **88 Tobacco products—performance requirements**

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

6 **89 Tobacco products—testing requirements**

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.3 Tobacco product requirements

Division 5 Tobacco product accessories

Section 90

1 **Division 5—Tobacco product accessories**

2 **90 Tobacco product accessories—prohibited terms**

- 3 A prohibited term must not appear anywhere on:
- 4 (a) a tobacco product accessory; or
- 5 (b) the wrapping of a tobacco product accessory.

6 **91 Tobacco product accessories—prohibited functions**

7 A tobacco product accessory must not alter, or be capable of

8 altering, the flavour or smell of a tobacco product with which it is

9 used.

- 10 Note: Examples of tobacco product accessories covered by this section are:
- 11 (a) a flavoured filter tip intended for use with roll-your-own tobacco;
- 12 or
- 13 (b) a flavour card designed to infuse a tobacco product with a
- 14 flavour or smell.

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**
General offences and civil penalty provisions—tobacco product requirements **Part 3.4**
Tobacco products not in retail packaging **Division 1**

Section 92

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

3 **Division 1—Tobacco products not in retail packaging**

4 **92 Retail sale of tobacco products without retail packaging**

5 (1) A person contravenes this subsection if:

6 (a) the person:

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

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

9 and

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

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

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

15 *Fault-based offence*

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

18 Penalty:

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

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

21 *Strict liability offence*

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

24 Penalty:

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

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 1 Tobacco products not in retail packaging

Section 93

1 *Civil penalty provision*

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

4 Civil penalty:

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

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

7 **93 Selling or supplying tobacco products to retailers without retail** 8 **packaging**

9 (1) A person contravenes this subsection if:

10 (a) the person:

11 (i) sells a tobacco product; or

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

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

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

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

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

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

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

24 *Exception—cigars sold or supplied to retailer for individual resale*

25 (2) Subsection (1) does not apply if:

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

28 (b) the tobacco products are cigars; and

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

EXPOSURE DRAFT

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

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

6 *Fault-based offence*

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

9 Penalty:

- 10 (a) for an individual—2,000 penalty units; and
11 (b) for a body corporate—20,000 penalty units.

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

14 *Strict liability offence*

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

17 Penalty:

- 18 (a) for an individual—60 penalty units; and
19 (b) for a body corporate—600 penalty units.

20 *Civil penalty provision*

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

23 Civil penalty:

- 24 (a) for an individual—2,000 penalty units; and
25 (b) for a body corporate—20,000 penalty units.

EXPOSURE DRAFT

1 *Fault-based offence*

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

4 Penalty:

- 5 (a) for an individual—2,000 penalty units; and
6 (b) for a body corporate—20,000 penalty units.

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

9 *Strict liability offence*

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

12 Civil penalty:

- 13 (a) for an individual—60 penalty units; and
14 (b) for a body corporate—600 penalty units.

15 *Civil penalty provision*

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

18 Penalty:

- 19 (a) for an individual—2,000 penalty units; and
20 (b) for a body corporate—20,000 penalty units.

21 **95 Purchasing tobacco products in non-compliant retail packaging**

22 (1) A person contravenes this subsection if:

- 23 (a) the person purchases a tobacco product; and
24 (b) at the time the product is purchased, the product has been
25 packaged for retail sale; and
26 (c) the retail packaging does not comply with a tobacco product
27 requirement.

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 2 Non-compliant retail packaging of tobacco products

Section 95

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

3 *Exception—cigars purchased by retailer for individual resale*

- 4 (2) Subsection (1) does not apply if:
5 (a) the person purchases multiple tobacco products; and
6 (b) the tobacco products are cigars; and
7 (c) the person is ordinarily engaged in the business of selling
8 tobacco products by way of retail sale in Australia; and
9 (d) the person intends to repack each cigar individually for
10 retail sale as a single cigar.

11 *Exception—purchase by individual for personal use*

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

14 *Exception—purchase in the course of compliance and enforcement*
15 *activities*

- 16 (4) Subsection (1) does not apply to any of the following persons if the
17 person purchases the tobacco product for the purposes of
18 monitoring or investigating compliance with, or exercising powers
19 under or in relation to, this Act:
20 (a) an authorised officer;
21 (b) a member or special member of the Australian Federal Police
22 (within the meaning of the *Australian Federal Police Act*
23 *1979*);
24 (c) a member of the police force or police service of a State or
25 Territory;
26 (d) a person:
27 (i) who is appointed or employed by a State or Territory, or
28 by a local governing body established by or under a law
29 of a State or Territory; and
30 (ii) who has responsibilities in relation to compliance and
31 enforcement matters concerning regulated tobacco
32 items.

EXPOSURE DRAFT

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

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

6 *Fault-based offence*

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

9 Penalty:

- 10 (a) for an individual—2,000 penalty units; and
11 (b) for a body corporate—20,000 penalty units.

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

14 *Strict liability offence*

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

17 Penalty:

- 18 (a) for an individual—60 penalty units; and
19 (b) for a body corporate—600 penalty units.

20 *Civil penalty provision*

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

23 Civil penalty:

- 24 (a) for an individual—2,000 penalty units; and
25 (b) for a body corporate—20,000 penalty units.

26 **96 Possessing tobacco products in non-compliant retail packaging**

27 (1) A person contravenes this subsection if:
28 (a) the person possesses a tobacco product; and

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 2 Non-compliant retail packaging of tobacco products

Section 96

- 1 (b) at the time of possession, the product has been packaged for
2 retail sale; and
3 (c) the retail packaging does not comply with a tobacco product
4 requirement.

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

7 *Exception—cigars possessed by retailer for individual resale*

- 8 (2) Subsection (1) does not apply if:
9 (a) the person possesses multiple tobacco products; and
10 (b) the tobacco products are cigars; and
11 (c) the person is ordinarily engaged in the business of selling
12 tobacco products by way of retail sale in Australia; and
13 (d) the person intends to repackage each cigar individually for
14 retail sale as a single cigar.

15 *Exception—possession by individual for personal use*

- 16 (3) Subsection (1) does not apply if:
17 (a) an individual possesses the tobacco product for the
18 individual's personal use; and
19 (b) the amount of the tobacco product in the individual's
20 possession does not exceed the amount (if any) prescribed by
21 regulations made for the purposes of this paragraph.

22 *Exception—possession in the course of compliance and*
23 *enforcement activities*

- 24 (4) Subsection (1) does not apply to any of the following persons if the
25 person possesses the tobacco product for the purposes of
26 monitoring or investigating compliance with, or exercising powers
27 under or in relation to, this Act:
28 (a) an authorised officer;
29 (b) a member or special member of the Australian Federal Police
30 (within the meaning of the *Australian Federal Police Act*
31 *1979*);

EXPOSURE DRAFT

- 1 (c) a member of the police force or police service of a State or
2 Territory;
- 3 (d) a person:
- 4 (i) who is appointed or employed by a State or Territory, or
5 by a local governing body established by or under a law
6 of a State or Territory; and
- 7 (ii) who has responsibilities in relation to compliance and
8 enforcement matters concerning regulated tobacco
9 items.

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

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

15 *Fault-based offence*

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

18 Penalty:

- 19 (a) for an individual—2,000 penalty units; and
20 (b) for a body corporate—20,000 penalty units.

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

23 *Strict liability offence*

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

26 Penalty:

- 27 (a) for an individual—60 penalty units; and
28 (b) for a body corporate—600 penalty units.

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 2 Non-compliant retail packaging of tobacco products

Section 97

1 *Civil penalty provision*

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

4 Civil penalty:

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

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

7 **97 Packaging tobacco products in non-compliant retail packaging**

8 (1) A person contravenes this subsection if:

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

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

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

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

16 *Fault-based offence*

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

19 Penalty:

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

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

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

25 *Strict liability offence*

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

28 Penalty:

EXPOSURE DRAFT

- 1 (a) for an individual—60 penalty units; and
2 (b) for a body corporate—600 penalty units.

3 *Civil penalty provision*

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

6 Civil penalty:

- 7 (a) for an individual—2,000 penalty units; and
8 (b) for a body corporate—20,000 penalty units.

9 **98 Manufacturing non-compliant retail packaging of tobacco**
10 **products**

- 11 (1) A person contravenes this subsection if:
12 (a) the person manufactures any retail packaging of tobacco
13 products (other than an insert or onsert); and
14 (b) the retail packaging does not comply with a tobacco product
15 requirement.

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

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

20 *Fault-based offence*

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

23 Penalty:

- 24 (a) for an individual—2,000 penalty units; and
25 (b) for a body corporate—20,000 penalty units.

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 2 Non-compliant retail packaging of tobacco products

Section 99

1 *Strict liability offence*

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

4 Penalty:

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

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

7 *Civil penalty provision*

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

10 Civil penalty:

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

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

13 **99 Possessing non-compliant retail packaging of tobacco products**

14 (1) A person contravenes this subsection if:

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

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

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

21 *Exception—possession by individual*

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

25 *Exception—possession in the course of compliance and
26 enforcement activities*

27 (3) Subsection (1) does not apply to any of the following persons if the
28 person possesses the retail packaging for the purposes of

EXPOSURE DRAFT

- 1 monitoring or investigating compliance with, or exercising powers
2 under or in relation to, this Act:
- 3 (a) an authorised officer;
- 4 (b) a member or special member of the Australian Federal Police
5 (within the meaning of the *Australian Federal Police Act*
6 *1979*);
- 7 (c) a member of the police force or police service of a State or
8 Territory;
- 9 (d) a person:
- 10 (i) who is appointed or employed by a State or Territory, or
11 by a local governing body established by or under a law
12 of a State or Territory; and
- 13 (ii) who has responsibilities in relation to compliance and
14 enforcement matters concerning regulated tobacco
15 items.

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

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

20 *Fault-based offence*

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

23 Penalty:

- 24 (a) for an individual—2,000 penalty units; and
25 (b) for a body corporate—20,000 penalty units.

- 26 (5) For the purposes of subsection (4), strict liability applies to the
27 physical element of the offence that the packaging is retail
28 packaging.

29 *Strict liability offence*

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

32 Penalty:

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Chapter 3 Tobacco product requirements

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

Division 2 Non-compliant retail packaging of tobacco products

Section 100

- 1 (a) for an individual—60 penalty units; and
2 (b) for a body corporate—600 penalty units.

3 *Civil penalty provision*

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

6 Civil penalty:

- 7 (a) for an individual—2,000 penalty units; and
8 (b) for a body corporate—20,000 penalty units.

9 **100 Manufacturing tobacco products that are packaged in** 10 **non-compliant retail packaging**

- 11 (1) A person contravenes this subsection if:
12 (a) the person (the *manufacturer*) manufactures a tobacco
13 product; and
14 (b) the manufacturer enters into a contract or arrangement, or
15 arrives at an understanding, for another person to package the
16 tobacco product for retail sale; and
17 (c) the tobacco product is packaged for retail sale by the other
18 person; and
19 (d) the retail packaging does not comply with a tobacco product
20 requirement.

21 Note: The physical elements of offences against subsections (3) and (4) are
22 set out in this subsection (see section 165).

23 *Exception*

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

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

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

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**
General offences and civil penalty provisions—tobacco product requirements **Part 3.4**
Non-compliant retail packaging of tobacco products **Division 2**

Section 100

1

Fault-based offence

2

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

3

4

Penalty:

5

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

6

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

7

Strict liability offence

8

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

9

10

Penalty:

11

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

12

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

13

Civil penalty provision

14

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

15

16

Civil penalty:

17

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

18

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

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 3 Non-compliant regulated tobacco items

Section 101

1 **Division 3—Non-compliant regulated tobacco items**

2 **101 Scope of Division**

3 This Division applies to a contravention of a tobacco product
4 requirement other than a requirement relating to the retail
5 packaging of tobacco products.

6 Note: Divisions 1 and 2 deal with contraventions relating to the retail
7 packaging of tobacco products.

8 **102 Selling or supplying non-compliant regulated tobacco items**

9 (1) A person contravenes this subsection if:

10 (a) the person:

11 (i) sells a regulated tobacco item; or

12 (ii) offers a regulated tobacco item for sale; or

13 (iii) otherwise supplies (whether or not for consideration) a
14 regulated tobacco item; and

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

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

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

21 Note 3: See section 15 for an extended meaning of *offer*.

22 *Fault-based offence*

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

25 Penalty:

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

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

EXPOSURE DRAFT

1 *Strict liability offence*

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

4 **Penalty:**

- 5 (a) for an individual—60 penalty units; and
6 (b) for a body corporate—600 penalty units.

7 *Civil penalty provision*

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

10 **Civil penalty:**

- 11 (a) for an individual—2,000 penalty units; and
12 (b) for a body corporate—20,000 penalty units.

13 **103 Purchasing non-compliant regulated tobacco items**

- 14 (1) A person contravenes this subsection if:
15 (a) the person purchases a regulated tobacco item; and
16 (b) at the time the item is purchased, the item does not comply
17 with a tobacco product requirement.

18 **Note:** The physical elements of offences against subsections (4) and (5) are
19 set out in this subsection (see section 165).

20 *Exception—purchase by individual for personal use*

- 21 (2) Subsection (1) does not apply to an individual who purchases the
22 regulated tobacco item for the individual's personal use.

23 *Exception—purchase in the course of compliance and enforcement*
24 *activities*

- 25 (3) Subsection (1) does not apply to any of the following persons if the
26 person purchases the regulated tobacco item for the purposes of
27 monitoring or investigating compliance with, or exercising powers
28 under or in relation to, this Act:

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

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

Division 3 Non-compliant regulated tobacco items

Section 103

- 1 (a) an authorised officer;
- 2 (b) a member or special member of the Australian Federal Police
- 3 (within the meaning of the *Australian Federal Police Act*
- 4 *1979*);
- 5 (c) a member of the police force or police service of a State or
- 6 Territory;
- 7 (d) a person:
- 8 (i) who is appointed or employed by a State or Territory, or
- 9 by a local governing body established by or under a law
- 10 of a State or Territory; and
- 11 (ii) who has responsibilities in relation to compliance and
- 12 enforcement matters concerning regulated tobacco
- 13 items.

14 Note 1: A defendant bears an evidential burden in relation to the matters in

15 subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

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

17 exception).

18 *Fault-based offence*

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

21 Penalty:

- 22 (a) for an individual—2,000 penalty units; and
- 23 (b) for a body corporate—20,000 penalty units.

24 *Strict liability offence*

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

27 Penalty:

- 28 (a) for an individual—60 penalty units; and
- 29 (b) for a body corporate—600 penalty units.

EXPOSURE DRAFT

1 *Civil penalty provision*

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

4 Civil penalty:

- 5 (a) for an individual—2,000 penalty units; and
6 (b) for a body corporate—20,000 penalty units.

7 **104 Possessing non-compliant regulated tobacco items**

- 8 (1) A person contravenes this subsection if:
9 (a) the person possesses a regulated tobacco item; and
10 (b) at the time of possession, the item does not comply with a
11 tobacco product requirement.

12 Note: The physical elements of offences against subsections (4) and (5) are
13 set out in this subsection (see section 165).

14 *Exception—possession by individual for personal use*

- 15 (2) Subsection (1) does not apply to an individual who possesses the
16 regulated tobacco item for the individual's personal use.

17 *Exception—possession in the course of compliance and*
18 *enforcement activities*

- 19 (3) Subsection (1) does not apply to any of the following persons if the
20 person possesses the regulated tobacco item for the purposes of
21 monitoring or investigating compliance with, or exercising powers
22 under or in relation to, this Act:
23 (a) an authorised officer;
24 (b) a member or special member of the Australian Federal Police
25 (within the meaning of the *Australian Federal Police Act*
26 *1979*);
27 (c) a member of the police force or police service of a State or
28 Territory;
29 (d) a person:

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Chapter 3 Tobacco product requirements

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

Division 3 Non-compliant regulated tobacco items

Section 104

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

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

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

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

11 *Fault-based offence*

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

14 Penalty:

- 15 (a) for an individual—2,000 penalty units; and
16 (b) for a body corporate—20,000 penalty units.

17 *Strict liability offence*

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

20 Penalty:

- 21 (a) for an individual—60 penalty units; and
22 (b) for a body corporate—600 penalty units.

23 *Civil penalty provision*

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

26 Civil penalty:

- 27 (a) for an individual—2,000 penalty units; and
28 (b) for a body corporate—20,000 penalty units.

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.5 Offences and civil penalty provisions relating to constitutional corporations—
tobacco product requirements

Division 1 Tobacco products not in retail packaging

Section 106

1 **Part 3.5—Offences and civil penalty provisions**
2 **relating to constitutional corporations—**
3 **tobacco product requirements**

4 **Division 1—Tobacco products not in retail packaging**

5 **106 Retail sale of tobacco products without retail packaging to a**
6 **constitutional corporation**

- 7 (1) A person contravenes this subsection if:
8 (a) the person:
9 (i) sells a tobacco product by way of retail sale; or
10 (ii) offers a tobacco product for sale by way of retail sale;
11 to another person; and
12 (b) that other person is a constitutional corporation; and
13 (c) at the time the product is sold or offered for sale, the product
14 is not in retail packaging.

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

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

18 *Fault-based offence*

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

21 Penalty:

- 22 (a) for an individual—2,000 penalty units; and
23 (b) for a body corporate—20,000 penalty units.

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

EXPOSURE DRAFT

Section 107

Strict liability offence

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

Penalty:

- 4 (a) for an individual—60 penalty units; and
5 (b) for a body corporate—600 penalty units.
6

Civil penalty provision

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

Civil penalty:

- 10 (a) for an individual—2,000 penalty units; and
11 (b) for a body corporate—20,000 penalty units.
12

107 Selling or supplying tobacco products without retail packaging to retailer who is a constitutional corporation

- 13
14
15 (1) A person contravenes this subsection if:
16 (a) the person:
17 (i) sells a tobacco product; or
18 (ii) offers a tobacco product for sale; or
19 (iii) otherwise supplies (whether or not for consideration) a
20 tobacco product;
21 to another person (the *retailer*); and
22 (b) the retailer is a constitutional corporation; and
23 (c) at the time the product is sold, offered for sale or supplied to
24 the retailer, the product is not in retail packaging; and
25 (d) at that time, the person knows that, or is reckless as to
26 whether, the retailer is ordinarily in the business of selling
27 tobacco products by way of retail sale.

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

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

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**
Offences and civil penalty provisions relating to constitutional corporations—tobacco
product requirements **Part 3.5**
Non-compliant retail packaging of tobacco products **Division 2**

Section 108

1 *Civil penalty provision*

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

4 Civil penalty:

- 5 (a) for an individual—2,000 penalty units; and
6 (b) for a body corporate—20,000 penalty units.

7 **Division 2—Non-compliant retail packaging of tobacco** 8 **products**

9 **108 Selling or supplying tobacco products in non-compliant retail** 10 **packaging to a constitutional corporation**

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

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

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

26 *Exception—cigars sold or supplied to retailer for individual resale*

- 27 (2) Subsection (1) does not apply if:
28 (a) the sale, offer or supply is in respect of multiple tobacco
29 products; and

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- 1 (b) the tobacco products are cigars; and
2 (c) the retailer is ordinarily engaged in the business of selling
3 tobacco products by way of retail sale in Australia; and
4 (d) the person reasonably believes that the retailer intends to
5 repackage each cigar individually for retail sale as a single
6 cigar.

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

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

11 *Fault-based offence*

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

14 Penalty:

- 15 (a) for an individual—2,000 penalty units; and
16 (b) for a body corporate—20,000 penalty units.

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

19 *Strict liability offence*

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

22 Penalty:

- 23 (a) for an individual—60 penalty units; and
24 (b) for a body corporate—600 penalty units.

25 *Civil penalty provision*

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

28 Civil penalty:

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

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

2 **109 Purchasing tobacco products in non-compliant retail packaging**
3 **from a constitutional corporation**

- 4 (1) A person contravenes this subsection if:
- 5 (a) the person purchases a tobacco product from another person;
 - 6 and
 - 7 (b) that other person is a constitutional corporation; and
 - 8 (c) at the time the product is purchased, the product has been
 - 9 packaged for retail sale; and
 - 10 (d) the retail packaging does not comply with a tobacco product
 - 11 requirement.

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

14 *Exception—cigars purchased by retailer for individual resale*

- 15 (2) Subsection (1) does not apply if:
- 16 (a) the person purchases multiple tobacco products; and
 - 17 (b) the tobacco products are cigars; and
 - 18 (c) the person is ordinarily engaged in the business of selling
 - 19 tobacco products by way of retail sale in Australia; and
 - 20 (d) the person intends to repackage each cigar individually for
 - 21 retail sale as a single cigar.

22 *Exception—purchase by individual for personal use*

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

25 *Exception—purchase in the course of compliance and enforcement*
26 *activities*

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

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- 1 (a) an authorised officer;
- 2 (b) a member or special member of the Australian Federal Police
- 3 (within the meaning of the *Australian Federal Police Act*
- 4 *1979*);
- 5 (c) a member of the police force or police service of a State or
- 6 Territory;
- 7 (d) a person:
- 8 (i) who is appointed or employed by a State or Territory, or
- 9 by a local governing body established by or under a law
- 10 of a State or Territory; and
- 11 (ii) who has responsibilities in relation to compliance and
- 12 enforcement matters concerning regulated tobacco
- 13 items.

14 Note 1: A defendant bears an evidential burden in relation to the matters in

15 subsections (2), (3) and (4) (see subsection 13.3(3) of the *Criminal*

16 *Code*).

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

18 exception).

19 *Fault-based offence*

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

22 Penalty:

- 23 (a) for an individual—2,000 penalty units; and
- 24 (b) for a body corporate—20,000 penalty units.

- 25 (6) For the purposes of subsection (5), strict liability applies to
- 26 paragraphs (1)(b) and (c).

27 *Strict liability offence*

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

30 Penalty:

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

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Section 110

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

2 *Civil penalty provision*

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

5 Civil penalty:

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

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

8 **110 Possessing tobacco products in non-compliant retail packaging** 9 **obtained from a constitutional corporation**

10 (1) A person contravenes this subsection if:

11 (a) the person possesses a tobacco product; and

12 (b) the person obtained possession of the product from a
13 constitutional corporation; and

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

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

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

20 *Exception—cigars possessed by retailer for individual resale*

21 (2) Subsection (1) does not apply if:

22 (a) the person possesses multiple tobacco products; and

23 (b) the tobacco products are cigars; and

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

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

28 *Exception—possession by individual for personal use*

29 (3) Subsection (1) does not apply if:

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- 1 (a) an individual possesses the tobacco product for the
2 individual's personal use; and
3 (b) the amount of the tobacco product in the individual's
4 possession does not exceed the amount (if any) prescribed by
5 regulations made for the purposes of this paragraph.

6 *Exception—possession in the course of compliance and*
7 *enforcement activities*

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

- 12 (a) an authorised officer;
13 (b) a member or special member of the Australian Federal Police
14 (within the meaning of the *Australian Federal Police Act*
15 *1979*);
16 (c) a member of the police force or police service of a State or
17 Territory;
18 (d) a person:
19 (i) who is appointed or employed by a State or Territory, or
20 by a local governing body established by or under a law
21 of a State or Territory; and
22 (ii) who has responsibilities in relation to compliance and
23 enforcement matters concerning regulated tobacco
24 items.

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

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

30 *Fault-based offence*

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

33 Penalty:

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- 1 (a) for an individual—2,000 penalty units; and
2 (b) for a body corporate—20,000 penalty units.
- 3 (6) For the purposes of subsection (5), strict liability applies to:
4 (a) the physical element of the offence that the person from
5 whom possession of the tobacco product was obtained is a
6 constitutional corporation; and
7 (b) paragraph (1)(c).

Strict liability offence

- 8
9 (7) A person commits an offence of strict liability if the person
10 contravenes subsection (1).

Penalty:

- 11
12 (a) for an individual—60 penalty units; and
13 (b) for a body corporate—600 penalty units.

Civil penalty provision

- 14
15 (8) A person is liable to a civil penalty if the person contravenes
16 subsection (1).

Civil penalty:

- 17
18 (a) for an individual—2,000 penalty units; and
19 (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

- 20
21
22 (1) A person contravenes this subsection if:
23 (a) the person packages a tobacco product for retail sale; and
24 (b) the product is packaged under a contract with a constitutional
25 corporation; and
26 (c) the retail packaging does not comply with a tobacco product
27 requirement.

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

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

3 *Fault-based offence*

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

6 Penalty:

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

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

9 (3) For the purposes of subsection (2), strict liability applies to:

10 (a) the physical element of the offence that the tobacco product
11 is packaged for retail sale; and

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

13 *Strict liability offence*

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

16 Penalty:

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

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

19 *Civil penalty provision*

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

22 Civil penalty:

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

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

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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.

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1 *Civil penalty provision*

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

4 Civil penalty:

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

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

7 **113 Possessing non-compliant retail packaging of tobacco products** 8 **obtained from a constitutional corporation**

9 (1) A person contravenes this subsection if:

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

12 (b) the person obtained possession of the retail packaging from a
13 constitutional corporation; and

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

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

18 *Exception—possession by individual*

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

22 *Exception—possession in the course of compliance and*
23 *enforcement activities*

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

28 (a) an authorised officer;

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- 1 (b) a member or special member of the Australian Federal Police
2 (within the meaning of the *Australian Federal Police Act*
3 *1979*);
4 (c) a member of the police force or police service of a State or
5 Territory;
6 (d) a person:
7 (i) who is appointed or employed by a State or Territory, or
8 by a local governing body established by or under a law
9 of a State or Territory; and
10 (ii) who has responsibilities in relation to compliance and
11 enforcement matters concerning regulated tobacco
12 items.

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

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

17 *Fault-based offence*

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

20 Penalty:

- 21 (a) for an individual—2,000 penalty units; and
22 (b) for a body corporate—20,000 penalty units.

- 23 (5) For the purposes of subsection (4), strict liability applies to the
24 physical elements of the offence that:

- 25 (a) the packaging is retail packaging; and
26 (b) the person from whom possession of the tobacco product was
27 obtained is a constitutional corporation.

28 *Strict liability offence*

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

31 Penalty:

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- 1 (a) for an individual—60 penalty units; and
2 (b) for a body corporate—600 penalty units.

3 *Civil penalty provision*

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

6 Civil penalty:

- 7 (a) for an individual—2,000 penalty units; and
8 (b) for a body corporate—20,000 penalty units.

9 **114 Manufacturing tobacco products that are packaged in**
10 **non-compliant retail packaging by a constitutional**
11 **corporation**

- 12 (1) A person contravenes this subsection if:
13 (a) the person (the *manufacturer*) manufactures a tobacco
14 product; and
15 (b) the manufacturer enters into a contract or arrangement, or
16 arrives at an understanding, for another person to package the
17 tobacco product for retail sale; and
18 (c) that other person is a constitutional corporation; and
19 (d) the tobacco product is packaged for retail sale by the other
20 person; and
21 (e) the retail packaging does not comply with a tobacco product
22 requirement.

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

25 *Exception*

- 26 (2) Subsection (1) does not apply if the manufacturer took all
27 reasonable steps to ensure that the retail packaging complied with
28 the tobacco product requirements.

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

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

3 *Fault-based offence*

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

6 Penalty:

- 7 (a) for an individual—2,000 penalty units; and
8 (b) for a body corporate—20,000 penalty units.

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

11 *Strict liability offence*

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

14 Penalty:

- 15 (a) for an individual—60 penalty units; and
16 (b) for a body corporate—600 penalty units.

17 *Civil penalty provision*

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

20 Civil penalty:

- 21 (a) for an individual—2,000 penalty units; and
22 (b) for a body corporate—20,000 penalty units.

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Division 3 Non-compliant regulated tobacco items

Section 115

1 **Division 3—Non-compliant regulated tobacco items**

2 **115 Scope of Division**

3 This Division applies to a contravention of a tobacco product
4 requirement other than a requirement relating to the retail
5 packaging of tobacco products.

6 Note: Divisions 1 and 2 deal with contraventions relating to the retail
7 packaging of tobacco products.

8 **116 Selling or supplying non-compliant regulated tobacco items to a** 9 **constitutional corporation**

- 10 (1) A person contravenes this subsection if:
11 (a) the person:
12 (i) sells a regulated tobacco item; or
13 (ii) offers a regulated tobacco item for sale; or
14 (iii) otherwise supplies (whether or not for consideration) a
15 regulated tobacco item;
16 to another person; and
17 (b) that other person is a constitutional corporation; and
18 (c) the item does not comply with a tobacco product
19 requirement.

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

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

24 Note 3: See section 15 for an extended meaning of *offer*.

25 *Fault-based offence*

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

28 Penalty:

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

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Section 117

- 1 (b) for a body corporate—20,000 penalty units.
- 2 (3) For the purposes of subsection (2), strict liability applies to
3 paragraph (1)(b).
- 4 *Strict liability offence*
- 5 (4) A person commits an offence of strict liability if the person
6 contravenes subsection (1).
- 7 Penalty:
- 8 (a) for an individual—60 penalty units; and
9 (b) for a body corporate—600 penalty units.
- 10 *Civil penalty provision*
- 11 (5) A person is liable to a civil penalty if the person contravenes
12 subsection (1).
- 13 Civil penalty:
- 14 (a) for an individual—2,000 penalty units; and
15 (b) for a body corporate—20,000 penalty units.

117 Purchasing non-compliant regulated tobacco items from a constitutional corporation

- 18 (1) A person contravenes this subsection if:
19 (a) the person purchases a regulated tobacco item from another
20 person; and
21 (b) that other person is a constitutional corporation; and
22 (c) at the time the product is purchased, the item does not
23 comply with a tobacco product requirement.
- 24 Note: The physical elements of offences against subsections (4) and (6) are
25 set out in this subsection (see section 165).
- 26 *Exception—purchase by individual for personal use*
- 27 (2) Subsection (1) does not apply to an individual who purchases the
28 regulated tobacco item for the individual's personal use.

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1 *Exception—purchase in the course of compliance and enforcement*
2 *activities*

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

- 7 (a) an authorised officer;
- 8 (b) a member or special member of the Australian Federal Police
9 (within the meaning of the *Australian Federal Police Act*
10 *1979*);
- 11 (c) a member of the police force or police service of a State or
12 Territory;
- 13 (d) a person:
- 14 (i) who is appointed or employed by a State or Territory, or
15 by a local governing body established by or under a law
16 of a State or Territory; and
- 17 (ii) who has responsibilities in relation to compliance and
18 enforcement matters concerning regulated tobacco
19 items.

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

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

24 *Fault-based offence*

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

27 Penalty:

- 28 (a) for an individual—2,000 penalty units; and
29 (b) for a body corporate—20,000 penalty units.

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

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1 *Strict liability offence*

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

4 Penalty:

- 5 (a) for an individual—60 penalty units; and
6 (b) for a body corporate—600 penalty units.

7 *Civil penalty provision*

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

10 Civil penalty:

- 11 (a) for an individual—2,000 penalty units; and
12 (b) for a body corporate—20,000 penalty units.

13 **118 Possessing non-compliant regulated tobacco items obtained** 14 **from a constitutional corporation**

- 15 (1) A person contravenes this subsection if:
16 (a) the person possesses a regulated tobacco item; and
17 (b) the person obtained possession of the item from a
18 constitutional corporation; and
19 (c) at the time of possession, the item does not comply with a
20 tobacco product requirement.

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

23 *Exception—possession by individual for personal use*

- 24 (2) Subsection (1) does not apply to an individual who possesses the
25 regulated tobacco item for the individual's personal use.

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Section 119

1 *Strict liability offence*

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

4 Penalty:

- 5 (a) for an individual—60 penalty units; and
6 (b) for a body corporate—600 penalty units.

7 *Civil penalty provision*

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

10 Civil penalty:

- 11 (a) for an individual—2,000 penalty units; and
12 (b) for a body corporate—20,000 penalty units.

13 **119 Manufacturing non-compliant regulated tobacco items under a** 14 **contract with a constitutional corporation**

- 15 (1) A person contravenes this subsection if:
16 (a) the person manufactures a regulated tobacco item under a
17 contract with another person; and
18 (b) that other person is a constitutional corporation; and
19 (c) the item does not comply with a tobacco product
20 requirement.

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

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

25 *Fault-based offence*

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

28 Penalty:

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- 1 (a) for an individual—2,000 penalty units; and
2 (b) for a body corporate—20,000 penalty units.
- 3 (3) For the purposes of subsection (2), strict liability applies to
4 paragraph (1)(b).

5 *Strict liability offence*

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

8 Penalty:

- 9 (a) for an individual—60 penalty units; and
10 (b) for a body corporate—600 penalty units.

11 *Civil penalty provision*

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

14 Civil penalty:

- 15 (a) for an individual—2,000 penalty units; and
16 (b) for a body corporate—20,000 penalty units.

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Miscellaneous **Part 3.6**

Export exception **Division 1**

Section 120

1 **Part 3.6—Miscellaneous**

2 **Division 1—Export exception**

3 **120 Export exception for non-compliant retail packaging or**
4 **regulated tobacco items**

5 *Scope*

- 6 (1) This section applies in relation to subsection (1) (the *conduct rule*)
7 of each of the following provisions:
8 (a) sections 94 to 100;
9 (b) sections 102 to 105;
10 (c) sections 108 to 114;
11 (d) sections 116 to 119.

12 *Export exception*

- 13 (2) The conduct rule does not apply to a person (the *relevant person*)
14 if:
15 (a) the relevant person engages in conduct that would (apart
16 from this section) contravene the conduct rule in relation to a
17 regulated tobacco item; and
18 (b) subsection (3) is satisfied in relation to the item.

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

21 *Export conditions*

- 22 (3) This subsection is satisfied in relation to a regulated tobacco item
23 if:
24 (a) a contract or arrangement has been entered into, or an
25 understanding has been reached, with another person for the
26 item to be exported (whether or not the relevant person is a
27 party to that contract, arrangement or understanding); and

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Part 3.6 Miscellaneous

Division 1 Export exception

Section 120

- 1 (b) the relevant person engages in the conduct in the course of,
- 2 or for the purposes of, the item being exported; and
- 3 (c) in a case where the relevant person sells or supplies the item,
- 4 or offers to sell or supply the item—the sale or supply is not,
- 5 or would not be, a retail sale; and
- 6 (d) in a case where the relevant person purchases the item—the
- 7 relevant person does not purchase the item in the course of a
- 8 retail sale.

EXPOSURE DRAFT

Tobacco product requirements **Chapter 3**

Miscellaneous **Part 3.6**

Interaction with Trade Marks Act and Designs Act **Division 2**

Section 121

1 **Division 2—Interaction with Trade Marks Act and Designs**
2 **Act**

3 **121 Effect on the Trade Marks Act of non-use of trade mark as a**
4 **result of this Act**

5 *Effect on use requirements under Trade Marks Act*

- 6 (1) For the purposes of the Trade Marks Act and regulations made
7 under that Act, an applicant for the registration of a trade mark in
8 respect of a regulated tobacco item is taken to intend to:
9 (a) use the trade mark in Australia in relation to that item; or
10 (b) authorise another person to use the trade mark in Australia in
11 relation to that item; or
12 (c) assign the trade mark to a body corporate that is about to be
13 constituted with a view to the body corporate using the trade
14 mark in Australia in relation to that item;
15 if the applicant would intend to do so but for the operation of this
16 Act.
- 17 (2) To avoid doubt, for the purposes of paragraph 42(b) of the Trade
18 Marks Act, this Act does not have the effect that the use of a trade
19 mark in relation to a regulated tobacco item would be contrary to
20 law.

21 *Effect on registration under Trade Marks Act*

- 22 (3) To avoid doubt, subsection (4) applies for the purposes of:
23 (a) sections 38 and 84A of the Trade Marks Act; and
24 (b) any power of the Registrar of Trade Marks under the
25 regulations made under that Act:
26 (i) to revoke the acceptance of an international registration
27 designating Australia (within the meaning of those
28 regulations); or
29 (ii) to amend or cease protection of a protected international
30 trade mark (within the meaning of those regulations).

EXPOSURE DRAFT

Chapter 3 Tobacco product requirements

Part 3.6 Miscellaneous

Division 2 Interaction with Trade Marks Act and Designs Act

Section 122

- 1 (4) Neither:
2 (a) the operation of this Act; nor
3 (b) the circumstance that a person is prevented, by or under this
4 Act, from using a trade mark on or in relation to regulated
5 tobacco items, or on or in relation to the retail packaging of
6 tobacco products;
7 are circumstances that make it reasonable or appropriate:
8 (c) not to register the trade mark; or
9 (d) to revoke the acceptance of an application for registration of
10 the trade mark; or
11 (e) to register the trade mark subject to conditions or limitations;
12 or
13 (f) to revoke the registration of the trade mark.

14 *Proceedings relating to opposed applications*

- 15 (5) For the purposes of paragraph 100(1)(c) of the Trade Marks Act,
16 an opponent is taken to have rebutted an allegation if the opponent
17 establishes that, but for the operation of this Act, the registered
18 owner would have used the trade mark in Australia:
19 (a) on or in relation to regulated tobacco items; or
20 (b) on or in relation to the retail packaging of tobacco products.

21 *Trade Marks regulations applying provisions of Trade Marks Act*

- 22 (6) Subsections (1) to (5) also apply in relation to regulations made
23 under the Trade Marks Act that apply provisions of the Trade
24 Marks Act that are affected by this section, including where the
25 regulations apply those provisions in modified form.

26 **122 Effect on the Designs Act of failure to make products as a result** 27 **of this Act**

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

- 31 (a) under section 90 of the Designs Act, requiring the grant of a
32 licence in relation to the design; or

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Tobacco product requirements **Chapter 3**

Miscellaneous **Part 3.6**

Interaction with Trade Marks Act and Designs Act **Division 2**

Section 122

1
2

(b) under section 92 of that Act, revoking the registration of the design.

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Chapter 3 Tobacco product requirements

Part 3.6 Miscellaneous

Division 3 Additional tobacco product requirements

Section 123

1 **Division 3—Additional tobacco product requirements**

2 **123 Regulations may prescribe additional requirements**

3 (1) The regulations may prescribe additional requirements in relation
4 to any of the following:

5 (a) the retail packaging of tobacco products;

6 (b) the content of tobacco products;

7 (c) tobacco product accessories;

8 (d) standards for tobacco products.

9 (2) Before regulations are made under subsection (1), the Minister
10 must be satisfied that making the proposed regulations will
11 advance either or both of the following objects of this Act:

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

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

16 (3) Part 3.3 does not limit subsection (1).

EXPOSURE DRAFT

Permanent bans on certain tobacco products **Chapter 4**
Introduction **Part 4.1**

Section 124

1 **Chapter 4—Permanent bans on certain**
2 **tobacco products**

3 **Part 4.1—Introduction**
4

5 **124 Simplified outline of this Chapter**

6 This Chapter imposes a permanent ban on chewing tobacco and
7 snuffs intended for oral use.

8 A person who contravenes this ban by dealing in, or possessing,
9 such a product may commit an offence or be liable for a civil
10 penalty.

11 **125 Tobacco products that are permanently banned**

12 The following tobacco products are permanently banned under this
13 Act:

- 14 (a) chewing tobacco;
15 (b) snuffs intended for oral use.

EXPOSURE DRAFT

Chapter 4 Permanent bans on certain tobacco products

Part 4.2 Offences and civil penalty provisions

Section 126

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:

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Permanent bans on certain tobacco products **Chapter 4**
Offences and civil penalty provisions **Part 4.2**

Section 126

1 (a) the conduct engaged in by the person is the sale or supply of,
2 or an offer to sell or supply, the tobacco product by way of
3 export; and

4 (b) the sale or supply is not, or would not be, a retail sale.

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

7 *Fault-based offence*

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

10 Penalty:

- 11 (a) for an individual—2,000 penalty units; and
12 (b) for a body corporate—20,000 penalty units.

13 (5) For the purposes of subsection (4), strict liability applies to
14 paragraphs (1)(c) and (d).

15 *Geographical application*

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

19 *Strict liability offence*

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

22 Penalty:

- 23 (a) for an individual—60 penalty units; and
24 (b) for a body corporate—600 penalty units.

25 *Civil penalty provision*

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

28 Civil penalty:

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Chapter 4 Permanent bans on certain tobacco products

Part 4.2 Offences and civil penalty provisions

Section 127

- 1 (a) for an individual—2,000 penalty units; and
2 (b) for a body corporate—20,000 penalty units.

3 **127 Possessing permanently banned tobacco products**

- 4 (1) A person contravenes this subsection if:
5 (a) the person possesses a tobacco product; and
6 (b) at the time of possession, the tobacco product is permanently
7 banned under this Act; and
8 (c) any of the following apply:
9 (i) the person is a constitutional corporation;
10 (ii) the person is a body corporate that is incorporated in a
11 Territory;
12 (iii) the person possesses the tobacco product in or for the
13 purposes of constitutional trade or commerce;
14 (iv) the person possesses the tobacco product in a Territory.

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

17 *Exception—possession for personal use*

- 18 (2) Subsection (1) does not apply if:
19 (a) the person who possesses the tobacco product is an
20 individual; and
21 (b) the possession of the tobacco product is for personal use by
22 the individual; and
23 (c) the tobacco product was imported in compliance with another
24 law of the Commonwealth.

25 *Exception—sale or supply by way of export*

- 26 (3) Subsection (1) does not apply if:
27 (a) the possession of the tobacco product is for the purpose of:
28 (i) the sale or supply of; or
29 (ii) an offer to sell or supply;
30 the tobacco product by way of export; and
31 (b) the sale or supply is not, or would not be, a retail sale.

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Permanent bans on certain tobacco products **Chapter 4**
Offences and civil penalty provisions **Part 4.2**

Section 127

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

3 *Fault-based offence*

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

6 Penalty:

- 7 (a) for an individual—2,000 penalty units; and
8 (b) for a body corporate—20,000 penalty units.

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

11 *Strict liability offence*

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

14 Penalty:

- 15 (a) for an individual—60 penalty units; and
16 (b) for a body corporate—600 penalty units.

17 *Civil penalty provision*

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

20 Civil penalty:

- 21 (a) for an individual—2,000 penalty units; and
22 (b) for a body corporate—20,000 penalty units.

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure
Part 5.1 Introduction

Section 128

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.

EXPOSURE DRAFT

Section 129

1 A reporting entity that contravenes a reporting requirement may
2 commit an offence or be liable for a civil penalty. The Minister
3 may also decide to publish information about the non-compliance,
4 including the identity of the reporting entity.

5 **129 Meaning of *reporting entity***

6 (1) Each of the following persons is a ***reporting entity***:

- 7 (a) a person who is a manufacturer of tobacco products that are
8 sold or supplied, or offered for sale or supply, in Australia;
9 (b) a person who is an importer of tobacco products that are sold
10 or supplied, or offered for sale or supply, in Australia.

11 Note: The meaning of ***person*** is affected by sections 169 (partnerships), 170
12 (unincorporated associations) and 171 (trusts).

13 *Reporting entities may be prescribed*

14 (2) The regulations may prescribe a person to be a ***reporting entity*** for
15 the purposes of this Act.

16 (3) Before regulations are made under subsection (2), the Minister
17 must be satisfied that the person proposed to be prescribed is
18 involved in the sale or supply (other than by way of retail sale) of
19 tobacco products in Australia.

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 1 Required reports

Section 130

1 **Part 5.2—Reports**

2 **Division 1—Required reports**

3 **130 Tobacco product ingredients**

- 4 (1) A reporting entity must give to the Secretary a report that identifies
5 the ingredients (other than processing aids) used in manufacturing
6 each kind of tobacco product sold or supplied, or offered for sale or
7 supply, by the entity in Australia during the reporting period.

8 Note: The ingredients of a cigarette include the paper, and any filter tip, used
9 in manufacturing the cigarette (see subsection 9(2)).

10 *Contents of report*

- 11 (2) The report must identify the following for each kind of tobacco
12 product:

- 13 (a) the brand name and variant name (if any) of the product;
14 (b) the common, chemical and trade name of each ingredient;
15 (c) the purpose for which the ingredient is used;
16 (d) the amount of the ingredient used in the product.

17 *Reporting period*

- 18 (3) For the purposes of this section, a **reporting period** is a financial
19 year.

- 20 (4) The report must be given to the Secretary within 30 days after the
21 end of the financial year.

22 Note: The Secretary may extend the period for giving the report in certain
23 circumstances (see section 142).

24 **131 Tobacco product volumes**

- 25 (1) A reporting entity must give to the Secretary a report that includes
26 the information mentioned in subsection (2) for each kind of

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Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

Required reports **Division 1**

Section 132

1 tobacco product sold or supplied, or offered for sale or supply, by
2 the entity in Australia during the reporting period.

3 *Contents of report*

- 4 (2) For the purposes of subsection (1), the information is the
5 following:
- 6 (a) if the reporting entity is an importer—the total number of
7 units imported by the reporting entity;
 - 8 (b) if the reporting entity is an importer—the total mass, in
9 kilograms, imported by the reporting entity;
 - 10 (c) the total number of units sold or supplied by the reporting
11 entity;
 - 12 (d) the total mass, in kilograms, sold or supplied by the reporting
13 entity;
 - 14 (e) the total Australian dollar value of sales revenue, including
15 excise duty;
 - 16 (f) the total number of units destroyed by the reporting entity;
 - 17 (g) the total mass, in kilograms, destroyed by the reporting
18 entity.

19 *Reporting period*

- 20 (3) For the purposes of this section, a **reporting period** is each 3 month
21 period ending on 31 March, 30 June, 30 September or
22 31 December.
- 23 (4) The report must be given to the Secretary within 30 days after the
24 end of the reporting period.

25 Note: The Secretary may extend the period for giving the report in certain
26 circumstances (see section 142).

27 **132 Marketing and promotional expenditure**

- 28 (1) A reporting entity must give to the Secretary a report that contains
29 information about the activities mentioned in subsection (2) (to the
30 extent they are not prohibited by this Act) conducted by the entity
31 during the reporting period.

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 1 Required reports

Section 132

1

Contents of report

2

(2) For the purposes of subsection (1), the activities are the following:

3

(a) marketing, promotion and sponsorship (such as corporate hospitality functions);

4

5

(b) corporate social responsibility activities;

6

(c) developing and designing retail packaging for tobacco products;

7

8

(d) contributions of a kind mentioned in subsection 39(1);

9

(e) lobbying;

10

(f) services or funding provided to any industry group or organisation that seeks to influence the development of public policy relating to tobacco control;

11

12

(g) philanthropy;

13

14

(h) rebates and reward systems offered to distributors and retailers of tobacco products;

15

16

(i) arrangements entered into with social media influencers.

17

Note: For paragraph (2)(d), the contributions mentioned in subsection 39(1) are political donations and electoral expenditure.

18

19

(3) The report must include for each activity mentioned in subsection (2):

20

21

(a) a description of the activity; and

22

(b) the expenditure on the activity during the reporting period; and

23

24

(c) the kind of tobacco product (if any) in relation to which the activity was undertaken.

25

26

Reporting period

27

(4) For the purposes of this section, a **reporting period** is a financial year.

28

29

(5) The report must be given to the Secretary within 30 days after the end of the financial year.

30

31

Note: The Secretary may extend the period for giving the report in certain circumstances (see section 142).

32

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Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

Required reports **Division 1**

Section 133

1 **133 Tobacco product research and development—manufacturers**

2 (1) This section applies to a reporting entity that is a manufacturer of
3 tobacco products.

4 (2) The reporting entity must give to the Secretary a report that
5 contains the information mentioned in subsection (3) about the
6 entity's research and development activities undertaken during the
7 reporting period in relation to tobacco products manufactured by
8 the entity that are or may be sold, or offered for sale or supply, in
9 Australia (whether during reporting period or otherwise).

10 *Contents of report*

11 (3) For the purposes of subsection (2), information about the following
12 research and development activities is required:

- 13 (a) tobacco product innovations;
14 (b) toxicity of tobacco products;
15 (c) ingredients of tobacco products;
16 (d) flavour, smell or intensity of tobacco products;
17 (e) addictiveness of tobacco products;
18 (f) consumer behaviour or preferences.

19 (4) The report must include the following for each of the activities
20 mentioned in subsection (3):

- 21 (a) a summary of the work that has been undertaken;
22 (b) the period during which the work was undertaken;
23 (c) the expenditure on the work during the reporting period.

24 *Reporting period*

25 (5) For the purposes of this section, a **reporting period** is a financial
26 year.

27 (6) The report must be given to the Secretary within 30 days after the
28 end of the reporting period.

29 Note: The Secretary may extend the period for giving the report in certain
30 circumstances (see section 142).

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 1 Required reports

Section 134

1 **134 Determinations by Secretary**

2 (1) The Secretary may, by notifiable instrument, determine that the
3 obligation to provide one or more reports under this Part does not
4 apply to a specified reporting entity. The determination may be
5 subject to conditions.

6 (2) The Secretary must not:

- 7 (a) revoke a determination under subsection (1); or
8 (b) vary such a determination by amending or including
9 conditions to which the determination is subject;

10 unless the Secretary has notified the entity, in writing, that it is
11 considering revoking or varying the determination.

EXPOSURE DRAFT

Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

General matters relating to reports **Division 2**

Section 135

1 **Division 2—General matters relating to reports**

2 **135 Scope of Division**

3 This Division applies in relation to reports required to be given
4 under this Chapter.

5 **136 How reports must be given**

- 6 (1) A report must be given in a form and manner (if any) approved in
7 an instrument under subsection (2).
- 8 (2) The Secretary may, by notifiable instrument, approve a form or
9 manner for the purposes of subsection (1).

10 **137 Contents of reports**

11 *Signature and certification of report*

- 12 (1) A report must:
- 13 (a) be signed on behalf of the reporting entity by a director or
14 other officer (both within the meaning of the *Corporations*
15 *Act 2001*) of the entity; and
- 16 (b) state that the information contained in the report is true and
17 correct to the best of the director's or officer's knowledge;
18 and
- 19 (c) state that a copy of the report will be given to the entity's
20 governing body.

21 *Contents of report—basic details*

- 22 (2) A report must include the following:
- 23 (a) the name of the reporting entity;
- 24 (b) if the reporting entity has an ABN—the ABN;
- 25 (c) a description of the entity's main business activities;
- 26 (d) a statement of the period to which the report relates;
- 27 (e) the date the report was signed;

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Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 2 General matters relating to reports

Section 138

- 1 (f) if the entity is a related body corporate in relation to another
2 body corporate that is itself a reporting entity—the name of
3 the other body corporate and a description of the relationship.

4 Note: For *related body corporate*, see section 8.

5 **138 Consolidated reports**

- 6 (1) A reporting entity may provide a single report (the *consolidated*
7 *report*) that contains 2 or more reports required to be given by the
8 reporting entity under this Chapter.
- 9 (2) The reports in the consolidated report must each cover a reporting
10 period that ends on the same day (even if the duration of the
11 reporting periods differ).
- 12 (3) The consolidated report must:
13 (a) separately identify each of the reports required by Division 1;
14 and
15 (b) satisfy subsection 137(1) in relation to each report.

16 *Direction by Secretary*

- 17 (4) The Secretary may, by notifiable instrument, direct a reporting
18 entity to provide reports in the form of a consolidated report.

19 **139 Reporting by related entities**

20 *Scope*

- 21 (1) This section applies if 2 or more reporting entities are related
22 bodies corporate.

23 Note: For *related body corporate*, see section 8.

24 *Group reports*

- 25 (2) The reporting entities may combine the reports required to be given
26 by the entities under this Chapter into a single report (the *group*
27 *report*).

EXPOSURE DRAFT

Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

General matters relating to reports **Division 2**

Section 140

- 1 (3) The group report must:
2 (a) state the reporting entities that are covered by the report; and
3 (b) describe how those entities are related bodies corporate; and
4 (c) separately identify each report given by each entity; and
5 (d) satisfy subsection 137(1) in relation to each report contained
6 in the group report.

7 **140 Direction by Secretary**

8 The Secretary may, by notifiable instrument, direct 2 or more
9 reporting entities who are related bodies corporate to provide
10 reports in the form of a group report under section 139.

11 Note: For *related body corporate*, see section 8.

12 **141 No duplication of information**

- 13 (1) A report given by a reporting entity must not duplicate the
14 information given in a report by another reporting entity to which
15 the first entity is a related body corporate.

16 Note: For *related body corporate*, see section 8.

- 17 (2) Subsection (1) applies whether or not the reporting entities submit
18 a group report under section 139.

19 **142 Extensions of time**

20 *Applications for further time*

- 21 (1) A reporting entity may apply, in writing, to the Secretary for an
22 extension to the period in which to give a report.

- 23 (2) The application must be made before the end of the period for
24 giving the report.

- 25 (3) The period for giving the report is extended until:

- 26 (a) if the Secretary extends the period for giving the report—the
27 end of that extended period; or

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Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 2 General matters relating to reports

Section 142

- 1 (b) if the Secretary refuses to extend the period for giving the
2 report—the day that is 7 days after written notice of the
3 Secretary’s decision is given to the reporting entity.

4 *Form and manner of application*

- 5 (4) The application must be made in a form and manner (if any)
6 approved in an instrument under subsection (5).
7 (5) The Secretary may, by notifiable instrument, approve a form or
8 manner for the purposes of subsection (4).

9 *Contents of application*

- 10 (6) The application must:
11 (a) state the extension sought to the period; and
12 (b) state the circumstances that have resulted in the need for the
13 extension; and
14 (c) include evidence of those circumstances; and
15 (d) include any other information prescribed by regulations made
16 for the purposes of this paragraph.

17 *Decision to extend period*

- 18 (7) The Secretary may, by written notice to the entity, extend the
19 period for giving the report if, after considering:
20 (a) the application; and
21 (b) any matters prescribed by regulations made for the purposes
22 of this paragraph;
23 the Secretary is satisfied that:
24 (c) the circumstances that have resulted in the need for an
25 extension of time are exceptional; or
26 (d) those circumstances were outside the entity’s reasonable
27 control.
28 (8) An extension to the period must be for such time as the Secretary
29 considers appropriate, having regard to:

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Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

General matters relating to reports **Division 2**

Section 143

1 (a) the nature of the circumstances that have resulted in the need
2 for further time; and

3 (b) the strength of the evidence included in the application.

4 (9) The Secretary may impose any condition that the Secretary
5 considers appropriate on the extension.

6 *Review by Administrative Appeals Tribunal*

7 (10) Applications may be made to the Administrative Appeals Tribunal
8 for review of a decision by the Secretary to:

9 (a) refuse to grant further time; or

10 (b) grant a shorter period of time than that sought in the
11 application; or

12 (c) impose a condition on the grant of further time.

13 **143 Secretary may request additional information**

14 (1) The Secretary may, by written notice to a reporting entity, request
15 the entity to provide specified information about, or in relation to, a
16 matter that is mentioned in a report given by the entity.

17 (2) The request must:

18 (a) be in writing; and

19 (b) specify the period in which the information is to be given.

20 (3) The reporting entity must comply with the request before the end
21 of:

22 (a) the period specified in the request; or

23 (b) any longer period allowed by the Secretary.

24 **144 Regulations may prescribe additional requirements**

25 (1) The regulations may prescribe the following:

26 (a) details about the information to be included in a report under
27 this Chapter;

28 (b) additional kinds of information that are to be included in a
29 report under this Chapter.

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 2 General matters relating to reports

Section 144

- 1 (2) Before regulations are made under subsection (1), the Minister
2 must be satisfied that making the proposed regulations will
3 advance either or both of the following objects of this Act:
4 (a) improving public health by discouraging smoking and the use
5 of regulated tobacco items (see paragraph 3(1)(a));
6 (b) giving effect to Australia's obligations under the Convention
7 on Tobacco Control (see paragraph 3(1)(b)).

EXPOSURE DRAFT

Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

Publication and disclosure **Division 3**

Section 145

1 **Division 3—Publication and disclosure**

2 **145 Publication of reports and information**

3 *Permitted publications*

- 4 (1) The Minister may publish, in any manner the Minister considers
5 appropriate, the following information (the *reported information*):
6 (a) any report, or part of a report, received from a reporting
7 entity under this Chapter;
8 (b) any data or other information contained in such a report.

9 *Restrictions on publication*

- 10 (2) However, the Minister must not publish reported information under
11 subsection (1) if the information is:
12 (a) a trade secret of the reporting entity; or
13 (b) other information of the reporting entity that has a
14 commercial value that would be, or could reasonably be
15 expected to be, destroyed or diminished if the information
16 were publicly disclosed.
- 17 (3) Subsection (2) does not apply to reported information that is:
18 (a) already in the public domain; or
19 (b) required to be disclosed under another law of the
20 Commonwealth, or under a law of a State or Territory; or
21 (c) readily discoverable.

22 **146 Disclosure for research, policy development or data analysis**

- 23 (1) The Secretary may disclose to another person or body information
24 (the *reported information*) mentioned in subsection 145(1) for the
25 purposes of the person or body undertaking research, policy
26 development or data analysis to assist the Department with:
27 (a) the administration of this Act; or
28 (b) achieving one or more objects of this Act.

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure

Part 5.2 Reports

Division 3 Publication and disclosure

Section 147

- 1 (2) The Secretary is not authorised to disclose reported information
2 under subsection (1) of this section to:
- 3 (a) another person who is not employed or engaged by the
4 Commonwealth or by a Commonwealth entity (within the
5 meaning of the *Public Governance, Performance and*
6 *Accountability Act 2013*); or
- 7 (b) a body that is not such a Commonwealth entity;
8 unless:
- 9 (c) the other person or body has undertaken not to use or further
10 disclose the reported information except in accordance with a
11 written agreement that:
- 12 (i) is in force between the Commonwealth and that person
13 or body; and
- 14 (ii) applies in relation to the reported information; and
- 15 (d) the Secretary is satisfied that the reported information will be
16 used or further disclosed only in accordance with the
17 agreement.

18 **147 Publication of information about failure to comply with Chapter**

- 19 (1) If the Minister is reasonably satisfied that a reporting entity has
20 failed to comply with this Chapter, the Minister may decide to
21 publish the following information (the ***non-compliance***
22 ***information***):
- 23 (a) the identity of the entity;
24 (b) the details of the non-compliance;
25 in any way the Minister considers appropriate.
- 26 (2) Before publishing the non-compliance information, the Minister
27 must give the reporting entity written notice of the decision and the
28 reasons for the decision.
- 29 (3) After the Minister gives the reporting entity notice of the decision,
30 the Minister may publish the non-compliance information unless
31 the reporting entity:
- 32 (a) makes an application under subsection (4) for review of the
33 decision; and

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Reporting and information disclosure **Chapter 5**

Reports **Part 5.2**

Publication and disclosure **Division 3**

Section 147

1 (b) gives the Minister a copy of that application;
2 within 10 business days after the reporting entity is given notice of
3 the decision.

4 *Review by Administrative Appeals Tribunal*

5 (4) Applications may be made to the Administrative Appeals Tribunal
6 for review of a decision by the Minister under subsection (1) to
7 publish non-compliance information.

8 (5) If a reporting entity makes such an application, the Minister may
9 publish the non-compliance information only if:

- 10 (a) the Administrative Appeals Tribunal affirms or varies the
11 Minister's decision; or
12 (b) the reporting entity withdraws the application for review of
13 the decision.

EXPOSURE DRAFT

Chapter 5 Reporting and information disclosure
Part 5.3 Offence and civil penalty provision

Section 148

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.

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Reporting and information disclosure **Chapter 5**
Offence and civil penalty provision **Part 5.3**

Section 148

1 (6) A person who contravenes subsection (2) or (5) commits a separate
2 offence in respect of each day (including a day of a conviction for
3 the offence or any later day) during which the contravention
4 continues.

5 *Civil penalty provision*

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

8 Civil penalty: 20 penalty units.

9 (8) The maximum civil penalty for each day that a contravention of
10 subsection (7) continues is 10% of the maximum civil penalty that
11 can be imposed in respect of a contravention of that subsection.

12 Note: Subsection (7) is a continuing civil penalty provision under section 93
13 of the Regulatory Powers Act.

EXPOSURE DRAFT

Chapter 6 Compliance and enforcement
Part 6.1 Introduction

Section 149

1 **Chapter 6—Compliance and enforcement**

2 **Part 6.1—Introduction**
3

4 **149 Simplified outline of this Chapter**

5 This Chapter deals with compliance and enforcement.

6 Compliance and enforcement activities are primarily undertaken by
7 persons appointed by the Secretary as authorised officers for the
8 purposes of this Act.

9 Authorised officers may do any of the following:

- 10 (a) require a person to give information or documents, or
11 to attend and answer questions, relevant to the
12 administration or enforcement of this Act;
13 (b) enter premises under a warrant or with the consent of the
14 occupier;
15 (c) exercise monitoring powers under Part 2 of the
16 Regulatory Powers Act;
17 (d) exercise investigation powers under Part 3 of the
18 Regulatory Powers Act.

19 Authorised officers also have certain other functions and powers
20 under the Regulatory Powers Act.

21 The Regulatory Powers Act also sets out the mechanisms for
22 enforcing civil penalty provisions, issuing infringement notices and
23 obtaining injunctions.

EXPOSURE DRAFT

Compliance and enforcement **Chapter 6**

Authorised officers **Part 6.2**

Appointment **Division 1**

Section 150

1 **Part 6.2—Authorised officers**

2 **Division 1—Appointment**

3 **150 Appointment of authorised officers**

4 (1) The Secretary may, in writing, appoint any of following persons as
5 an authorised officer for the purposes of this Act:

6 (a) a person who is an APS employee in the Department;

7 (b) a person who is appointed or engaged (otherwise than under
8 the *Public Service Act 1999*) by:

9 (i) the Commonwealth; or

10 (ii) a Commonwealth entity (within the meaning of the
11 *Public Governance, Performance and Accountability*
12 *Act 2013*);

13 (c) a person:

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

17 (ii) who has responsibilities in relation to compliance and
18 enforcement matters concerning control of regulated
19 tobacco items or e-cigarette products.

20 (2) The Secretary must not appoint a person as an authorised officer
21 unless the Secretary is satisfied that the person has suitable
22 qualifications, training or experience to properly perform the
23 functions, or exercise the powers, of an authorised officer.

24 (3) The Secretary may appoint a person mentioned in paragraph (1)(c)
25 as an authorised officer only with the agreement of the State or
26 Territory concerned.

27 (4) An authorised officer is appointed for the period specified in the
28 instrument of appointment.

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

EXPOSURE DRAFT

Chapter 6 Compliance and enforcement

Part 6.2 Authorised officers

Division 2 Powers

Section 151

1 **Division 2—Powers**

2 **151 Power to require persons to give information or produce**
3 **documents**

4 *Scope*

- 5 (1) This section applies if an authorised officer believes on reasonable
6 grounds that a person has information or a document that is
7 relevant to the administration or enforcement of this Act.

8 *Powers of authorised officer*

- 9 (2) The authorised officer may, by written notice given to the person,
10 require the person:
11 (a) to give any such information to a specified authorised officer
12 within the period specified in the notice; or
13 (b) to produce any such document to a specified authorised
14 officer within the period specified in the notice.

15 *Notice requirements*

- 16 (3) The period specified in the notice must be at least 14 days after the
17 notice is given to the person.
18 (4) The notice may specify the manner in which the person is required
19 to comply with the notice.
20 (5) The notice must state the effect of the following provisions:
21 (a) subsections (6) and (7);
22 (b) section 137.1 of the *Criminal Code* (about giving false or
23 misleading information);
24 (c) section 137.2 of the *Criminal Code* (about producing false or
25 misleading documents).

26 *Offence*

- 27 (6) A person commits an offence if:

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Compliance and enforcement **Chapter 6**

Authorised officers **Part 6.2**

Powers **Division 2**

Section 152

- 1 (a) the person is given a notice under subsection (2); and
2 (b) the person fails to comply with the notice.

3 Penalty: 60 penalty units.

4 *Civil penalty provision*

- 5 (7) A person is liable to a civil penalty if:
6 (a) the person is given a notice under subsection (2); and
7 (b) the person fails to comply with the notice.

8 Civil penalty: 60 penalty units.

9 **152 Power to require person to attend and answer questions**

10 *Scope*

- 11 (1) This section applies if an authorised officer believes on reasonable
12 grounds that a person has information that is relevant to the
13 administration or enforcement of this Act.

14 *Power of authorised officer*

- 15 (2) The authorised officer may, by written notice given to the person:
16 (a) require the person to appear before a specified authorised
17 officer to answer questions; and
18 (b) specify a time and place at which the person is to appear.
19 (3) The notice must state the effect of subsections (7) and (8).

20 *Oral or written answers*

- 21 (4) A person who attends before an authorised officer may be required
22 by the authorised officer to answer questions orally or in writing.

23 *Oath or affirmation*

- 24 (5) The authorised officer may question the person on oath or
25 affirmation and for that purpose may:
26 (a) require the person to take an oath or make an affirmation; and

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Chapter 6 Compliance and enforcement

Part 6.2 Authorised officers

Division 2 Powers

Section 153

1 (b) administer the oath or affirmation to the person.

2 (6) The oath or affirmation to be taken or made by the person is an
3 oath or affirmation that the statements that the person will make
4 will be true to the best of the person's knowledge or belief.

5 *Offence*

6 (7) A person commits an offence if:

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

8 (b) the person:

9 (i) refuses or fails to attend before the specified authorised
10 officer; or

11 (ii) attends before the specified authorised officer, but
12 refuses or fails to take an oath or make an affirmation.

13 Penalty: 60 penalty units.

14 *Civil penalty provision*

15 (8) A person is liable to a civil penalty if:

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

17 (b) the person:

18 (i) refuses or fails to attend before the specified authorised
19 officer; or

20 (ii) attends before the specified authorised officer, but
21 refuses or fails to take an oath or make an affirmation.

22 Civil penalty: 60 penalty units.

23 **153 Self-incrimination and self-exposure**

24 *Abrogation of privilege against self-incrimination*

25 (1) An individual is not excused from giving information, producing a
26 document or answering a question under subsection 151(2) or
27 152(2) on the ground that giving the information, producing the
28 document or answering the question might tend to incriminate the
29 individual in relation to an offence.

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Compliance and enforcement **Chapter 6**

Authorised officers **Part 6.2**

Powers **Division 2**

Section 153

1 Note: A body corporate is not entitled to claim the privilege against
2 self-incrimination.

3 (2) However:

4 (a) the information given, document produced or the answer
5 given; and

6 (b) the giving of the information, the production of the document
7 or the answering of the question; and

8 (c) any information, document or thing obtained as a direct or
9 indirect consequence of the giving of the information, the
10 production of the document or the answering of the question;

11 are not admissible in evidence against the individual in criminal
12 proceedings other than proceedings for an offence against:

13 (d) subsection 151(6) or 152(7) of this Act; or

14 (e) section 137.1 or 137.2 of the *Criminal Code* (which deal with
15 false or misleading information or documents) in relation to
16 giving the information, producing the document or answering
17 the question; or

18 (f) section 149.1 of the *Criminal Code* (which deals with
19 obstruction of Commonwealth public officials) in relation to
20 giving the information, producing the document or answering
21 the question.

22 *Abrogation of privilege against self-exposure to penalty*

23 (3) If, at general law, an individual would otherwise be able to claim
24 the privilege against self-exposure to a penalty (other than a
25 penalty for an offence) in relation to giving information, producing
26 a document or answering a question under subsection 151(2) or
27 152(2), the individual is not excused from giving the information,
28 producing the document or answering the question under that
29 provision on that ground.

30 Note: A body corporate is not entitled to claim the privilege against
31 self-exposure to a penalty.

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Chapter 6 Compliance and enforcement

Part 6.3 Monitoring and investigation powers

Division 1 Monitoring powers

Section 154

1 **Part 6.3—Monitoring and investigation powers**

2 **Division 1—Monitoring powers**

3 **154 Monitoring powers**

4 *Provisions subject to monitoring*

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

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

14 *Information subject to monitoring*

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

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

21 *Related provisions*

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

25 *Authorised applicant and authorised person*

- 26 (4) For the purposes of Part 2 of the Regulatory Powers Act, an
27 authorised officer is both an authorised applicant and an authorised

EXPOSURE DRAFT

Compliance and enforcement **Chapter 6**
Monitoring and investigation powers **Part 6.3**
Monitoring powers **Division 1**

Section 154

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

3 *Issuing officer*

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

8 *Relevant chief executive*

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

13 *Relevant court*

14 (7) For the purposes of Part 2 of the Regulatory Powers Act, each of
15 the following courts is a relevant court in relation to the provisions
16 mentioned in subsection (1) and the information mentioned in
17 subsection (2):

- 18 (a) the Federal Court of Australia;
19 (b) the Federal Circuit and Family Court of Australia
20 (Division 2);
21 (c) a court of a State or Territory that has jurisdiction in relation
22 to matters arising under this Act.

23 *Additional monitoring powers*

24 (8) For the purposes of Part 2 of the Regulatory Powers Act, the
25 powers mentioned in subsection (9) are taken to be additional
26 monitoring powers for the purposes of determining:
27 (a) whether a provision mentioned in subsection (1) has been, or
28 is being, complied with; or
29 (b) the correctness of the information mentioned in
30 subsection (2).

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Chapter 6 Compliance and enforcement

Part 6.3 Monitoring and investigation powers

Division 1 Monitoring powers

Section 154

- 1 (9) The additional monitoring powers are:
2 (a) the power to sample any thing on premises entered under
3 Part 2 of the Regulatory Powers Act; and
4 (b) the power to remove and test such samples.

5 *Use of force in executing a warrant*

- 6 (10) In executing a monitoring warrant under Part 2 of the Regulatory
7 Powers Act as that Part applies in relation to the provisions
8 mentioned in subsection (1) and the information mentioned in
9 subsection (2):
10 (a) an authorised person may use such force against things as is
11 necessary and reasonable in the circumstances; and
12 (b) a person assisting the authorised person may use such force
13 against things as is necessary and reasonable in the
14 circumstances.

15 *Person assisting*

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

20 *Self-incrimination etc.*

- 21 (12) Despite section 17 of the Regulatory Powers Act, an individual is
22 not excused from answering a question or producing a document,
23 under subsection 24(3) of that Act, as Part 2 of that Act applies in
24 relation to this Act, on the ground that answering the question, or
25 producing the document, might tend to incriminate the individual
26 in relation to an offence.

27 Note: A body corporate is not entitled to claim the privilege against
28 self-incrimination.

- 29 (13) However:
30 (a) the answer given or document produced; and
31 (b) the answering of the question or the production of the
32 document; and

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Monitoring and investigation powers **Part 6.3**
Monitoring powers **Division 1**

Section 155

- 1 (c) any information, document or thing obtained as a direct or
2 indirect consequence of the answering of the question or the
3 production of the document;
4 are not admissible in evidence against the individual in criminal
5 proceedings, other than proceedings for an offence against:
6 (d) section 137.1 or 137.2 of the *Criminal Code* (which deals
7 with false or misleading information or documents) that
8 relates to this Act; or
9 (e) section 149.1 of the *Criminal Code* (which deals with
10 obstruction of Commonwealth public officials) that relates to
11 this Act.
- 12 (14) If, at general law, an individual would otherwise be able to claim
13 the privilege against self-exposure to a penalty (other than a
14 penalty for an offence) in relation to answering a question, or
15 producing a document, under subsection 24(3) of the Regulatory
16 Powers Act, as Part 2 of that Act applies in relation to this Act, the
17 individual is not excused from answering the question or producing
18 the document under that subsection on that ground.
- 19 Note: A body corporate is not entitled to claim the privilege against
20 self-exposure to a penalty.

21 *Extension to external Territories*

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

25 **155 Consent and identification by authorised officers not required in** 26 **certain circumstances**

27 *Scope*

- 28 (1) This section applies if:
29 (a) an authorised officer enters the public area of business
30 premises when they are open to the public; and

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Chapter 6 Compliance and enforcement

Part 6.3 Monitoring and investigation powers

Division 1 Monitoring powers

Section 155

- 1 (b) the officer's entry is not made under a monitoring warrant
2 issued under section 32 of the Regulatory Powers Act, as that
3 section applies in relation to this Act; and
4 (c) the occupier of the premises has not consented to the entry;
5 and
6 (d) the officer's entry is solely for the purpose of exercising
7 monitoring powers (within the meaning of the Regulatory
8 Powers Act) in relation to a provision that is subject to
9 monitoring under Part 2 of that Act by doing any one or more
10 of the following:
11 (i) inspecting the retail packaging of tobacco products;
12 (ii) purchasing regulated tobacco items;
13 (iii) observing practices relating to the retail sale of
14 regulated tobacco items.

15 *No requirement to obtain consent or show identity card*

- 16 (2) Despite paragraph 18(2)(a) and section 25 of the Regulatory
17 Powers Act, the authorised officer is not required to:
18 (a) obtain the consent of the occupier of the premises to the
19 officer's entry; or
20 (b) show the occupier of the premises the officer's identity card
21 after entering the premises.

22 *Other rights and obligations unaffected*

- 23 (3) Nothing in this section affects:
24 (a) the right of an occupier of premises to refuse to allow the
25 authorised officer to enter, or remain, on the premises; or
26 (b) the obligations of the authorised officer under the Regulatory
27 Powers Act, as it applies in relation to this Act, concerning
28 the exercise of monitoring powers other than those
29 mentioned in subparagraphs (1)(d)(i) to (iii).

EXPOSURE DRAFT

Compliance and enforcement **Chapter 6**
Monitoring and investigation powers **Part 6.3**
Investigation powers **Division 2**

Section 156

1 **Division 2—Investigation powers**

2 **156 Investigation powers**

3 *Provisions subject to investigation*

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

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

13 *Related provisions*

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

18 *Authorised applicant and authorised person*

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

23 *Issuing officer*

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

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Chapter 6 Compliance and enforcement

Part 6.3 Monitoring and investigation powers

Division 2 Investigation powers

Section 156

1 *Relevant chief executive*

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

5 *Relevant court*

6 (6) For the purposes of Part 3 of the Regulatory Powers Act, each of
7 the following courts is a relevant court in relation to evidential
8 material that relates to a provision mentioned in subsection (1):
9 (a) the Federal Court of Australia;
10 (b) the Federal Circuit and Family Court of Australia
11 (Division 2);
12 (c) a court of a State or Territory that has jurisdiction in relation
13 to matters arising under this Act.

14 *Additional investigation powers*

15 (7) The additional powers mentioned in subsection (8) are taken to be
16 included in the investigation powers under Part 3 of the Regulatory
17 Powers Act as that Part applies in relation to evidential material
18 that relates to a provision mentioned in subsection (1).

19 (8) The additional investigation powers are:
20 (a) the power to sample any thing on premises entered under
21 Part 3 of the Regulatory Powers Act; and
22 (b) the power to remove and test such samples.

23 *Use of force in executing a warrant*

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

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Compliance and enforcement **Chapter 6**
Monitoring and investigation powers **Part 6.3**
Investigation powers **Division 2**

Section 156

1

Person assisting

2

- (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).

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Self-incrimination etc.

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- (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.

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Note: A body corporate is not entitled to claim the privilege against self-incrimination.

15

- (12) However:

16

(a) the answer given or document produced; and

17

(b) the answering of the question or the production of the document; and

18

19

(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;

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21

22

are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

23

24

(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

25

26

27

(e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

28

29

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- (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

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EXPOSURE DRAFT

Chapter 6 Compliance and enforcement

Part 6.3 Monitoring and investigation powers

Division 2 Investigation powers

Section 157

1 individual is not excused from answering the question or producing
2 the document under that subsection on that ground.

3 Note: A body corporate is not entitled to claim the privilege against
4 self-exposure to a penalty.

5 *Extension to external Territories*

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

9 **157 Forfeiture of seized regulated tobacco items**

10 *Scope*

11 (1) This section applies if:

- 12 (a) regulated tobacco items (the *seized items*) are seized under
13 Part 3 of the Regulatory Powers Act, as that Part applies in
14 relation to evidential material that relates to a provision
15 mentioned in subsection 156(1); and
16 (b) the seized items do not comply with a tobacco product
17 requirement.

18 *Forfeiture notices*

19 (2) An authorised officer may, within 14 days after seizure of the
20 seized items, give a written notice (a *forfeiture notice*) to:

- 21 (a) the owner of the items; or
22 (b) if the owner of the items cannot be identified after reasonable
23 inquiry—the person from whom the items were seized.

24 (3) Subsection (2) does not apply if:

- 25 (a) the owner of the seized items cannot be identified after
26 reasonable inquiries; and
27 (b) the items were not seized from a person.

28 (4) The forfeiture notice must:

- 29 (a) identify the seized items; and

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Compliance and enforcement **Chapter 6**
Monitoring and investigation powers **Part 6.3**
Investigation powers **Division 2**

Section 157

- 1 (b) state the date on which the items were seized; and
2 (c) state the tobacco product requirement or requirements with
3 which the items do not comply; and
4 (d) state that the owner may agree to the forfeiture of the items;
5 and
6 (e) explain the procedure for the possible return of the items in
7 subsections (5) to (7); and
8 (f) state that, unless the items are returned to the owner by order
9 of a magistrate under subsection (7), they are forfeited to the
10 Commonwealth by operation of subsection (8).

11 *Owner may apply to magistrate for return of seized items*

- 12 (5) The owner may apply to a magistrate for an order that the seized
13 items are to be returned to the owner.
- 14 (6) The application must be made:
15 (a) within 30 days after the forfeiture notice was given; or
16 (b) if no forfeiture notice was given because of subsection (3)—
17 within 30 days after seizure of the seized items.
- 18 (7) If the magistrate is satisfied that the seized items do not contravene
19 any tobacco product requirement, the magistrate must order that
20 the items are to be returned to the owner. Otherwise, the magistrate
21 must refuse to make the order.

22 *Forfeiture of seized items to the Commonwealth*

- 23 (8) The seized items are forfeited to the Commonwealth if:
24 (a) the owner of the seized items agrees to their forfeiture; or
25 (b) no application is made to a magistrate under subsection (5)
26 within the required time period; or
27 (c) an application made to a magistrate under subsection (5) is
28 refused.
- 29 (9) The Secretary may retain, destroy, dispose of or otherwise deal
30 with forfeited seized items as the Secretary sees fit.

EXPOSURE DRAFT

Chapter 6 Compliance and enforcement

Part 6.3 Monitoring and investigation powers

Division 2 Investigation powers

Section 158

1 **158 Recovery of costs in relation to seized items**

2 *Scope*

3 (1) This section applies if:

4 (a) regulated tobacco items (the *seized items*) are seized under
5 Part 3 of the Regulatory Powers Act, as that Part applies in
6 relation to evidential material that relates to a provision
7 mentioned in subsection 156(1); and

8 (b) a person has been convicted of an offence, or found to have
9 contravened a civil penalty provision, under Part 3.4 or 3.5 of
10 this Act in relation to the seized items.

11 *Recovery of costs*

12 (2) The person is liable to pay to the Commonwealth an amount equal
13 to the costs reasonably incurred by the Commonwealth in seizing,
14 retaining, destroying or otherwise dealing with the seized items.

15 (3) An amount payable by a person under subsection (2):

16 (a) is a debt due by the person to the Commonwealth; and

17 (b) may be recovered by action in a court of competent
18 jurisdiction.

19 **159 Modifications of Part 3 of the Regulatory Powers Act**

20 Part 3 of the Regulatory Powers Act applies in relation to
21 evidential material that relates to a provision mentioned in
22 subsection 156(1) of this Act as if a reference in paragraphs
23 66(1)(c) and 67(1)(a) of the Regulatory Powers Act to 60 days
24 were a reference to 90 days.

25 Note: Those paragraphs relate to the period for returning things seized under
26 Part 3 of the Regulatory Powers Act.

EXPOSURE DRAFT

Compliance and enforcement **Chapter 6**
Enforcing compliance with this Act **Part 6.4**
Civil penalty provisions **Division 1**

Section 160

1 **Part 6.4—Enforcing compliance with this Act**

2 **Division 1—Civil penalty provisions**

3 **160 Civil penalty provisions**

4 *Enforceable civil penalty provisions*

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

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

10 *Authorised applicant*

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

14 *Relevant court*

- 15 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
16 the following courts is a relevant court in relation to the civil
17 penalty provisions of this Act:
18 (a) the Federal Court of Australia;
19 (b) the Federal Circuit and Family Court of Australia
20 (Division 2);
21 (c) a court of a State or Territory that has jurisdiction in relation
22 to matters arising under this Act.

23 *Extension to external Territories*

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

EXPOSURE DRAFT

Chapter 6 Compliance and enforcement

Part 6.4 Enforcing compliance with this Act

Division 1 Civil penalty provisions

Section 160

1

Liability of Crown

2

- (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.

3

4

5

EXPOSURE DRAFT

Compliance and enforcement **Chapter 6**
Enforcing compliance with this Act **Part 6.4**
Infringement notices **Division 2**

Section 161

1 **Division 2—Infringement notices**

2 **161 Infringement notices**

3 *Provisions subject to an infringement notice*

4 (1) A strict liability offence under this Act is subject to an
5 infringement notice under Part 5 of the Regulatory Powers Act.

6 *Infringement officer*

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

10 *Relevant chief executive*

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

14 *Extension to external Territories*

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

18 *Liability of Crown*

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

EXPOSURE DRAFT

Chapter 6 Compliance and enforcement

Part 6.4 Enforcing compliance with this Act

Division 3 Enforceable undertakings

Section 162

1 **Division 3—Enforceable undertakings**

2 **162 Enforceable undertakings**

3 *Enforceable provisions*

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

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

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

11 *Authorised person*

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

15 *Relevant court*

16 (3) For the purposes of Part 6 of the Regulatory Powers Act, each of
17 the following courts is a relevant court in relation to the provisions
18 mentioned in subsection (1):

- 19 (a) the Federal Court of Australia;
20 (b) the Federal Circuit and Family Court of Australia
21 (Division 2);
22 (c) a court of a State or Territory that has jurisdiction in relation
23 to matters arising under this Act.

24 *Extension to external Territories*

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

EXPOSURE DRAFT

Compliance and enforcement **Chapter 6**
Enforcing compliance with this Act **Part 6.4**
Injunctions **Division 4**

Section 163

1 **Division 4—Injunctions**

2 **163 Injunctions**

3 *Enforceable provisions*

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

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

8 Note: Part 7 of the Regulatory Powers Act allows a provision to be enforced
9 by obtaining an injunction.

10 *Authorised person*

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

14 *Relevant court*

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

- 18 (a) the Federal Court of Australia;
19 (b) the Federal Circuit and Family Court of Australia
20 (Division 2);
21 (c) a court of a State or Territory that has jurisdiction in relation
22 to matters arising under this Act.

23 *Extension to external Territories*

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

EXPOSURE DRAFT

Chapter 7 Miscellaneous
Part 7.1 Introduction

Section 164

1 **Chapter 7—Miscellaneous**

2 **Part 7.1—Introduction**
3

4 **164 Simplified outline of this Chapter**

5 This Chapter deals with various miscellaneous matters, including
6 in relation to the following:

- 7 (a) general rules about offences and civil penalty
8 provisions;
9 (b) prohibiting doubling-up of liabilities;
10 (c) the treatment of partnerships, unincorporated
11 associations and trusts;
12 (d) cost recovery;
13 (e) the constitutional basis for this Act.

14 This Chapter also provides for the Minister and Secretary to
15 delegate their functions and powers, and includes a power to make
16 regulations.

EXPOSURE DRAFT

Miscellaneous **Chapter 7**
General rules about offences and civil penalty provisions **Part 7.2**
Interpretation **Division 1**

Section 165

1 **Part 7.2—General rules about offences and civil**
2 **penalty provisions**

3 **Division 1—Interpretation**

4 **165 Physical elements of offences**

5 (1) This section applies if a provision of this Act provides that a person
6 contravening another provision of this Act (the *conduct provision*)
7 commits an offence.

8 (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the
9 offence, the physical elements of the offence are set out in the
10 conduct provision.

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

13 **166 Contravening an offence provision or a civil penalty provision**

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

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

21 **167 Offences against this Act—extended meaning**

22 In this Chapter, a reference to an offence against this Act includes
23 an offence against Chapter 7 of the *Criminal Code* (about the
24 proper administration of Government) that relates to this Act.

EXPOSURE DRAFT

Chapter 7 Miscellaneous

Part 7.2 General rules about offences and civil penalty provisions

Division 2 No doubling-up of liabilities

Section 168

1 **Division 2—No doubling-up of liabilities**

2 **168 No doubling-up of liabilities**

3 (1) If:

4 (a) conduct of a person is an offence against this Act and is also
5 an offence against the Australian Consumer Law; and

6 (b) the person has been punished for the offence under the
7 Australian Consumer Law;

8 the person is not liable to be punished for the offence against this
9 Act.

10 (2) If a person has been ordered to pay a pecuniary penalty under the
11 Australian Consumer Law, the person is not liable to a civil penalty
12 under this Act in respect of the same conduct.

EXPOSURE DRAFT

Miscellaneous **Chapter 7**
General rules about offences and civil penalty provisions **Part 7.2**
Partnerships, unincorporated associations and trusts **Division 3**

Section 169

1 **Division 3—Partnerships, unincorporated associations and**
2 **trusts**

3 **169 Treatment of partnerships**

- 4 (1) This Act applies to a partnership as if it were a person, but with the
5 changes set out in this section.
- 6 (2) An obligation that would otherwise be imposed on the partnership
7 by this Act is imposed on each partner instead, but may be
8 discharged by any of the partners.
- 9 (3) An offence against this Act that would otherwise have been
10 committed by the partnership is taken to have been committed by
11 each partner in the partnership who, at the time the offence was
12 committed:
- 13 (a) engaged in the relevant conduct; or
14 (b) aided, abetted, counselled or procured the relevant conduct;
15 or
16 (c) was in any way knowingly concerned in, or party to, the
17 relevant conduct (whether directly or indirectly and whether
18 by any act or omission of the partner).
- 19 (4) This section applies to a contravention of a civil penalty provision
20 in a corresponding way to the way in which it applies to an
21 offence.
- 22 (5) For the purposes of this Act, a change in the composition of a
23 partnership does not affect the continuity of the partnership.

24 **170 Treatment of unincorporated associations**

- 25 (1) This Act applies to an unincorporated association as if it were a
26 person, but with the changes set out in this section.
- 27 (2) An obligation that would otherwise be imposed on the
28 unincorporated association by this Act is imposed on each member

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Chapter 7 Miscellaneous

Part 7.2 General rules about offences and civil penalty provisions

Division 3 Partnerships, unincorporated associations and trusts

Section 171

1 of the association's committee of management instead, but may be
2 discharged by any of the members.

3 (3) An offence against this Act that would otherwise have been
4 committed by the unincorporated association is taken to have been
5 committed by each member of the association's committee of
6 management who, at the time the offence was committed:

7 (a) engaged in the relevant conduct; or

8 (b) aided, abetted, counselled or procured the relevant conduct;
9 or

10 (c) was in any way knowingly concerned in, or party to, the
11 relevant conduct (whether directly or indirectly and whether
12 by any act or omission of the member).

13 (4) This section applies to a contravention of a civil penalty provision
14 in a corresponding way to the way in which it applies to an
15 offence.

16 **171 Treatment of trusts**

17 (1) This Act applies to a trust as if it were a person, but with the
18 changes set out in this section.

19 *Trusts with a single trustee*

20 (2) If the trust has a single trustee:

21 (a) an obligation that would otherwise be imposed on the trust by
22 this Act is imposed on the trustee instead; and

23 (b) an offence against this Act that would otherwise have been
24 committed by the trust is taken to have been committed by
25 the trustee.

26 *Trusts with multiple trustees*

27 (3) If the trust has 2 or more trustees:

28 (a) an obligation that would otherwise be imposed on the trust by
29 this Act is imposed on each trustee instead, but may be
30 discharged by any of the trustees; and

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Miscellaneous **Chapter 7**

General rules about offences and civil penalty provisions **Part 7.2**

Partnerships, unincorporated associations and trusts **Division 3**

Section 171

- 1 (b) an offence against this Act that would otherwise have been
2 committed by the trust is taken to have been committed by
3 each trustee of the trust who, at the time the offence was
4 committed:
5 (i) engaged in the relevant conduct; or
6 (ii) aided, abetted, counselled or procured the relevant
7 conduct; or
8 (iii) was in any way knowingly concerned in, or party to, the
9 relevant conduct (whether directly or indirectly and
10 whether by any act or omission of the trustee).

11 *Contraventions of civil penalty provisions*

- 12 (4) This section applies to a contravention of a civil penalty provision
13 in a corresponding way to the way in which it applies to an
14 offence.

EXPOSURE DRAFT

Chapter 7 Miscellaneous
Part 7.3 Cost recovery

Section 172

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.

EXPOSURE DRAFT

Section 174

1 **174 Person liable to pay fees**

2 The regulations may prescribe one or more persons who are liable
3 to pay a specified fee.

4 **175 Late payment fee**

5 (1) If the regulations specify the time when a fee (the *basic fee*) is due
6 and payable, the regulations may also specify a fee (a *late payment*
7 *fee*) that is due and payable if the basic fee is not paid at or before
8 that time.

9 (2) Without limiting subsection (1), the late payment fee may relate to
10 each day or part of a day that the basic fee remains unpaid after
11 becoming due and payable.

12 **176 Recovery of fees**

13 A fee (including a late payment fee) that is due and payable to the
14 Commonwealth under this Act may be recovered as a debt due to
15 the Commonwealth by action in a court of competent jurisdiction.

16 **177 Secretary may remit or refund fees**

17 (1) The Secretary may remit or refund the whole or part of a fee
18 (including a late payment fee) that is payable, or that has been paid,
19 to the Commonwealth if the Secretary is satisfied there are
20 circumstances that justify doing so.

21 (2) The Secretary may do so on the Secretary's own initiative or on
22 written application by a person.

23 **178 Secretary may direct that activities not be carried out**

24 If a person (the *debtor*) is liable to pay a fee (including a late
25 payment fee) that is due and payable, the Secretary may refuse to
26 carry out, or direct a person not to carry out, specified activities or
27 kinds of activities in relation to the debtor under this Act until the
28 fee has been paid.

EXPOSURE DRAFT

Chapter 7 Miscellaneous

Part 7.4 Constitutional provisions

Section 179

1 **Part 7.4—Constitutional provisions**
2

3 **179 Constitutional basis of this Act**

4 *Main constitutional basis*

- 5 (1) Subject to subsection (2), this Act relies on the Commonwealth's
6 legislative power under paragraph 51(xxix) (external affairs) of the
7 Constitution as it relates to giving effect to Australia's obligations
8 under the Convention on Tobacco Control.

9 *Section does not apply to certain provisions*

- 10 (2) This section does not apply to the following provisions of this Act:
11 (a) Part 2.4 (prohibition of e-cigarette advertisements);
12 (b) Part 2.5 (prohibition of e-cigarette sponsorships);
13 (c) Chapter 4 (permanent bans on certain tobacco products).

14 Note: The provisions mentioned in this subsection have limited
15 constitutional operation.

16 **180 Additional operation of this Act**

- 17 (1) In addition to section 179, this Act also has effect as provided by
18 this section.
19 (2) To avoid doubt, none of subsections (3) to (8) limit the operation
20 of any other subsection in this section.

21 *Trade and commerce power*

- 22 (3) This Act has the effect it would have if a reference to conduct were
23 expressly confined to conduct that takes place in the course of, or
24 in relation to, constitutional trade or commerce.

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1 *Communications power*

- 2 (4) This Act has the effect it would have if a reference to conduct were
3 expressly confined to conduct engaged in using a postal,
4 telegraphic, telephonic or other like service within the meaning of
5 paragraph 51(v) of the Constitution.

6 *Intellectual property power*

- 7 (5) This Act has the effect it would have if a reference to conduct were
8 expressly confined to conduct engaged in using any of the
9 following within the meaning of paragraph 51(xviii) of the
10 Constitution:
11 (a) a copyright;
12 (b) a patent of invention or design;
13 (c) a trade mark.

14 *Corporations power*

- 15 (6) This Act has the effect it would have if a reference to conduct were
16 expressly confined to conduct engaged in by:
17 (a) a constitutional corporation; or
18 (b) persons or entities through which a constitutional corporation
19 acts; or
20 (c) a person who is not a constitutional corporation, in a way that
21 affects, is capable of affecting or is engaged in with intent to
22 affect the activities, functions, relationships or business of a
23 constitutional corporation.

24 *External affairs power—geographically external aspect*

- 25 (7) The Act has the effect if would have if a reference to conduct were
26 expressly confined to conduct engaged in by a person outside
27 Australia.

28 *Territories power*

- 29 (8) This Act has the effect it would have if a reference to conduct were
30 expressly confined to conduct:

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Chapter 7 Miscellaneous

Part 7.4 Constitutional provisions

Section 181

- 1 (a) that takes place in a Territory; or
2 (b) by a body corporate incorporated in a Territory.

3 *Section does not apply to certain provisions*

- 4 (9) This section does not apply to the following provisions of this Act:
5 (a) Part 2.4 (prohibition of e-cigarette advertisements);
6 (b) Part 2.5 (prohibition of e-cigarette sponsorships);
7 (c) Chapter 4 (permanent bans on certain tobacco products).

8 Note: The provisions mentioned in this subsection already have limited
9 constitutional operation.

10 **181 Acquisition of property**

11 This Act has no effect to the extent (if any) that its operation would
12 result in an acquisition of property (within the meaning of
13 paragraph 51(xxxi) of the Constitution) from a person otherwise
14 than on just terms (within the meaning of that paragraph).

1 **Part 7.5—Other matters**
2

3 **182 Delegation by Minister**

- 4 (1) The Minister may, in writing, delegate to the Secretary the
5 Minister's functions or powers under the following provisions:
6 (a) subsection 129(3) (about prescribing a person to be a
7 reporting entity);
8 (b) section 145 (about publishing Chapter 5 reports and
9 information);
10 (c) section 147 (about publishing non-compliance information in
11 relation to Chapter 5).

12 Note: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*,
13 which contain extra rules about delegations.

- 14 (2) In exercising functions or powers delegated under subsection (1),
15 the Secretary must comply with any directions of the Minister.

16 **183 Delegation by Secretary**

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

20 Note 1: *SES employee* and *acting SES employee* are defined in section 2B of
21 the *Acts Interpretation Act 1901*.

22 Note 2: See also sections 34AA to 34A of the *Acts Interpretation Act 1901*,
23 which contain extra rules about delegations.

- 24 (2) The functions or powers that may be delegated under
25 subsection (1) include functions or powers the Secretary has as a
26 relevant chief executive, authorised applicant or authorised person
27 for the purposes of a provision of the Regulatory Powers Act
28 because of this Act.

- 29 (3) In exercising functions or powers delegated under subsection (1),
30 the delegate must comply with any directions of the Secretary.

EXPOSURE DRAFT

Section 184

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

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Section 186

1 (b) necessary or convenient to be prescribed for carrying out or
2 giving effect to this Act.

3 *Incorporation of other instruments*

4 (2) The regulations may make provision in relation to a matter by
5 applying, adopting or incorporating, with or without modification,
6 any matter contained in an instrument or other writing:

7 (a) as in force or existing at a particular time; or

8 (b) as in force or existing from time to time.

9 (3) Subsection (2) applies even if the instrument or other writing does
10 not exist when the regulations come into force.

11 (4) Subsection (2) has effect despite subsection 14(2) of the
12 *Legislation Act 2003*.
13