



# **Product Stewardship Act 2011**

**No. 76, 2011**

**An Act to provide a framework for reducing the environmental and other impacts of products, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Product Stewardship Act 2011

No. 76, 2011

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**An Act to provide a framework for reducing the environmental and other impacts of products, and for related purposes**

*[Assented to 25 July 2011]*

The Parliament of Australia enacts:

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*Product Stewardship Act 2011 No. 76, 2011 1*

## Part 1—Introduction

### Division 1—Preliminary

#### 1 Short title

This Act may be cited as the *Product Stewardship Act 2011*.

#### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	25 July 2011
2. Sections 3 to 111	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	8 August 2011 (see F2011L01586)

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## **Division 2—Guide to this Act**

### **3 Guide to this Act**

This Act is about product stewardship.

Product stewardship is an approach to reducing the environmental and other impacts of products by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products.

This Act provides a framework for 3 kinds of product stewardship.

#### *Voluntary product stewardship*

Part 2 is about voluntary product stewardship. This involves accrediting voluntary arrangements designed to further the objects of this Act in relation to products, and authorising the use of product stewardship logos in connection with such arrangements.

#### *Co-regulatory product stewardship*

Part 3 is about co-regulatory product stewardship. This involves requiring some manufacturers, importers, distributors and users of products (called liable parties), who have been specified in the regulations, to be members of co-regulatory arrangements approved by the Minister.

These arrangements must have outcomes, specified in the regulations, that are designed to further the objects of this Act.

Administrators of approved co-regulatory arrangements are required to take all reasonable steps to ensure those outcomes are achieved in accordance with the regulations.

#### *Mandatory product stewardship*

Part 4 is about mandatory product stewardship. This involves enabling regulations to be made that would require some persons to take, or not to take, specified action in relation to products.

*Objects of this Act and product stewardship criteria*

Before regulations are made specifying liable parties for a class of products under Part 3 (co-regulatory product stewardship), or requiring action to be taken in relation to products under Part 4 (mandatory product stewardship), the Minister must be satisfied that:

- (a) making the regulations will further the objects of this Act; and
- (b) the product stewardship criteria are satisfied.

The objects of this Act and the product stewardship criteria are also relevant to determining whether to accredit a voluntary arrangement under Part 2. They are set out in Division 3 of Part 1.

*Other introductory matters*

Part 1 also contains the Dictionary. The Dictionary is a list of every term that is defined in this Act. A term will either be defined in the Dictionary itself, or in another provision of this Act. If another provision defines the term, the Dictionary will have a signpost to that definition.

In addition, Part 1 deals with the application of this Act to the Crown and in the external Territories. It also deals with the relationship between this Act and State and Territory laws.

*Enforcing this Act*

Part 5 deals with enforcing this Act, including regulations and legislative instruments made under it.

Division 2 of that Part allows courts to order persons to pay pecuniary penalties for contravening provisions of this Act called civil penalty provisions.

Division 3 of that Part allows contraventions of this Act and adverse decisions (such as cancelling an arrangement's accreditation or approval) to be publicised.

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

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

#### *Compliance powers*

Part 6 is about ensuring compliance with this Act.

Division 2 of that Part is about the powers of inspectors. These powers may be used for the purposes of determining whether a person is complying with this Act or for the purposes of investigating a possible contravention of this Act.

Division 3 of that Part is about gathering information for the purposes of investigating or preventing a possible contravention of a civil penalty provision or an offence provision in this Act.

#### *Reviewing decisions*

Part 7 is about reviewing some decisions made under this Act (called reviewable decisions).

Reviewable decisions (other than those made by the Minister personally) can be reviewed by the Minister (an internal review).

Reviewable decisions made by the Minister personally or on an internal review can be reviewed by the Administrative Appeals Tribunal.

**Part 1** Introduction

**Division 2** Guide to this Act

Section 3

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*Protecting information*

Part 8 is about protecting information (called protected information) obtained by or disclosed to persons in connection with this Act.

Disclosing protected information is an offence if it might substantially prejudice the commercial interests of a person, and the disclosure is not authorised by this Part.

There is also a limitation on the ability of courts and tribunals to require the disclosure of protected information.

*Miscellaneous matters*

Part 9 deals with a variety of miscellaneous matters, such as making applications, delegations and the power to make regulations.

## **Division 3—Objects of this Act and product stewardship criteria**

### **4 Objects of this Act**

*Object—reducing impact of products*

- (1) It is an object of this Act to reduce the impact:
  - (a) that products have on the environment, throughout their lives; and
  - (b) that substances contained in products have on the environment, and on the health and safety of human beings, throughout the lives of those products.
- (2) It is Parliament's intention that this object be achieved by encouraging or requiring manufacturers, importers, distributors and other persons to take responsibility for those products, including by taking action that relates to the following:
  - (a) avoiding generating waste from products;
  - (b) reducing or eliminating the amount of waste from products to be disposed of;
  - (c) reducing or eliminating hazardous substances in products and in waste from products;
  - (d) managing waste from products as a resource;
  - (e) ensuring that products and waste from products are reused, recycled, recovered, treated and disposed of in a safe, scientific and environmentally sound way.

*Other objects*

- (3) The following are also objects of this Act:
  - (a) to contribute to Australia meeting its international obligations concerning the impacts referred to in subsection (1);
  - (b) to contribute to reducing the amount of greenhouse gases emitted, energy used and water consumed in connection with products and waste from products.

## 5 Product stewardship criteria

The *product stewardship criteria* are satisfied in relation to a class of products if:

- (a) the products in the class are in a national market; and
- (b) at least one of the following applies in relation to the products in the class:
  - (i) the products contain hazardous substances;
  - (ii) there is the potential to significantly increase the conservation of materials used in the products, or the recovery of resources (including materials and energy) from waste from the products;
  - (iii) there is the potential to significantly reduce the impact that the products have on the environment, or that substances in the products have on the environment, or on the health or safety of human beings.

Note: Whether the product stewardship criteria are satisfied in relation to a class of products is relevant for determining whether:

- (a) to accredit a voluntary arrangement in relation to that class of products (see subsection 13(3)); or
- (b) regulations can be made under this Act in relation to the class of products (see sections 19 (co-regulatory product stewardship—liable parties for class of products) and 39 (mandatory product stewardship requirements)).

## **Division 4—The Dictionary**

### **6 The Dictionary**

In this Act:

*accredited voluntary arrangement*: see subsection 12(1).

*accrediting authority*: see paragraph 13(2)(c).

*acquisition of property*: see subsection 106(3).

*administrator*:

- (a) of a co-regulatory arrangement: see paragraph 20(2)(e); and
- (b) of a voluntary arrangement: see paragraph 12(2)(c).

*Advisory Group* means the Product Stewardship Advisory Group established by subsection 108B(1).

*affected*: for when a person is *affected* by a reviewable decision, see section 93.

*agency* means:

- (a) a Department of State; or
- (b) any agency, authority or body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth or of a State or Territory.

*approved co-regulatory arrangement*: see subsection 20(1).

*artistic work* has the same meaning as in the *Copyright Act 1968*.

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

*civil penalty order*: see subsection 42(3).

***civil penalty provision*** means:

- (a) a subsection, or a section that is not divided into subsections;  
or
- (b) a subregulation, or a regulation that is not divided into subregulations;

that has set out at its foot the words “civil penalty” and one or more amounts in penalty units, or that another provision of this Act declares to be a civil penalty provision.

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

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

- (a) between Australia and a place outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories.

***co-regulatory arrangement***: see subsection 20(2).

***damage***, in relation to data: see subsection 105(5).

***distribute*** includes sell and supply, whether for consideration or not.

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

***evidential material*** means any thing that may be relevant to:

- (a) the investigation or prosecution of:
  - (i) an offence against this Act; or
  - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; or
- (b) the investigation or bringing of proceedings in relation to a contravention of a civil penalty provision in this Act.

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

***executive officer***, of a body corporate: see subsection 51(4).

**export** means export from Australia.

**Federal Magistrate** means a Federal Magistrate of the Federal Magistrates Court.

**import** means import into Australia, and includes bring into Australia.

**improvement notice** means an improvement notice given under section 29.

**inspector** means an inspector appointed under subsection 68(1).

**intellectual property rights**: see section 15.

**just terms**: see subsection 106(3).

**liable party** in relation to a class of products: see section 19.

**life** of a product includes:

- (a) the time when the product begins to be manufactured; and
- (b) the time when the product is waste.

**magistrate** includes a Federal Magistrate in respect of whom a consent under subsection 87(1) and a nomination under subsection 87(2) are in force.

**negligent**: for when an executive officer of a body corporate is **negligent** in relation to a contravention by the body corporate of a civil penalty provision, see subsection 51(6).

**penalty unit**, in relation to a civil penalty provision, has the same meaning as in section 4AA of the *Crimes Act 1914*.

**person who has product stewardship information**: see section 89.

**product** means a thing (including a substance or mixture of substances) that is:

- (a) manufactured; or
- (b) specified in regulations made for the purposes of this paragraph.

**product return payment**: see subsection 37(5).

***product stewardship criteria***: see section 5.

***product stewardship logo***: see section 14.

***prospective liable party***: see subsection 32(1).

***protected information***: see subsection 98(3).

***reckless***: for when an executive officer of a body corporate is ***reckless*** in relation to a contravention by the body corporate of a civil penalty provision, see subsection 51(5).

***recover*** in relation to products or waste from products, includes recover resources, material or energy from those products or that waste.

***relevant court*** means:

- (a) the Federal Court of Australia; or
- (b) a Supreme Court of a State or Territory.

***reviewable decision***: see section 93.

***scheme***: see subsection 32(6).

***this Act*** includes regulations, and other legislative instruments, made under this Act.

***trade mark*** has the same meaning as in the *Trade Marks Act 1995*.

***voluntary arrangement***: see subsection 12(2).

***waste***, in relation to a product, means waste associated with the product after it is disposed of.

## **Division 5—Application of this Act**

### **7 Act binds Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

### **8 Extension to external Territories**

This Act extends to every external Territory.

### **9 Relationship to State and Territory laws**

This Act is not intended to exclude the operation of any law of a State or Territory, to the extent that that law is capable of operating concurrently with this Act.

## **Part 2—Voluntary product stewardship**

### **Division 1—Guide to this Part**

#### **10 Guide to this Part**

This Part is about voluntary product stewardship.

This involves accrediting voluntary arrangements designed to further the objects of this Act in relation to products, and authorising the use of product stewardship logos in connection with such arrangements.

In accrediting a voluntary arrangement, the accrediting authority must have regard to matters such as:

- (a) whether the arrangement's outcomes will further the objects of this Act and are likely to be achieved; and
- (b) whether the product stewardship criteria are satisfied in relation to the products to which the arrangement relates; and
- (c) the appropriate use of product stewardship logos under the arrangement; and
- (d) the public interest.

Other matters relating to accreditation can be dealt with in legislative instruments.

## **Division 2—Voluntary product stewardship**

### **11 Exercising rights in product stewardship logo in accordance with accredited voluntary arrangement**

A person is licensed, or authorised, to exercise the Commonwealth's intellectual property rights in a product stewardship logo if the exercise of those rights is in accordance with an accredited voluntary arrangement.

Note 1: For what is an accredited voluntary arrangement, see section 12.

Note 2: For accreditation of voluntary arrangements, see section 13.

Note 3: For what is a product stewardship logo, see section 14.

Note 4: For what are the Commonwealth's intellectual property rights in a product stewardship logo, see section 15.

### **12 What is an *accredited voluntary arrangement***

#### *Accredited voluntary arrangements*

- (1) An ***accredited voluntary arrangement*** is a voluntary arrangement that is accredited in relation to a class of products in accordance with a determination by the Minister under section 13.

#### *Voluntary arrangements*

- (2) A ***voluntary arrangement*** is an arrangement (however described) in relation to which the following conditions are satisfied:
- (a) the arrangement is designed to further the objects of this Act by achieving one or more measurable outcomes in relation to a class of products;
  - (b) there is a written document setting out:
    - (i) the persons, or classes of person, who are authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo in connection with products in that class; and

- (ii) the circumstances in which those persons are authorised by the arrangement to exercise those rights in connection with those products;
- (c) the arrangement provides for there to be a person (the *administrator*) who is responsible for ensuring the outcomes referred to in paragraph (a) are achieved;
- (d) the administrator is a body corporate.

### **13 Accreditation of voluntary arrangements**

- (1) The Minister may, by legislative instrument, determine matters relating to the accreditation of voluntary arrangements in relation to classes of products.
- (2) Without limiting subsection (1), the determination may provide for any or all of the following:
  - (a) who may apply for accreditation of a voluntary arrangement in relation to a class of products;
  - (b) the circumstances in which a person may apply for such an accreditation;
  - (c) who may make a decision on such an application (the *accrediting authority*);
  - (d) matters in relation to which the accrediting authority must be satisfied before accrediting a voluntary arrangement in relation to a class of products;
  - (e) grounds on which the accrediting authority may or must refuse to accredit a voluntary arrangement in relation to a class of products;
  - (f) the imposition of conditions by the accrediting authority on a voluntary arrangement's accreditation in relation to a class of products;
  - (g) reviewing the operation of accredited voluntary arrangements;
  - (h) cancellation by an accrediting authority of a voluntary arrangement's accreditation in relation to a class of products.

Note 1: See sections 102 and 103 for additional matters relating to applications.

Note 2: The following are examples for paragraph (f):

- (a) a condition that the administrator of a voluntary arrangement take reasonable steps to ensure the arrangement's outcomes are achieved;
- (b) a condition relating to the exercise of the Commonwealth's intellectual property rights in the product stewardship logo in accordance with the arrangement.

*Preconditions to accreditation*

- (3) Without limiting subsection (1) or (2), the determination must require the accrediting authority to refuse to accredit a voluntary arrangement in relation to a class of products if the accrediting authority is satisfied that:
  - (a) an outcome of the arrangement in relation to the class of products will not further the objects of this Act; or
  - (b) the arrangement is unlikely to achieve one or more of those outcomes; or
  - (c) the product stewardship criteria are not satisfied in relation to the class of products (see section 5); or
  - (d) the persons licensed or authorised by the arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo in connection with products in that class, or the circumstances in which those persons are licensed or authorised, are not appropriate (see subsection (4)); or
  - (e) it is not in the public interest to accredit the arrangement (see subsection (4)).

*Public interest and appropriate use of logo—relevant matters*

- (4) In determining whether the accrediting authority is satisfied as mentioned in paragraph (3)(d) or (e), the accrediting authority:
  - (a) must have regard to the objects of this Act; and
  - (b) may have regard to any other matter.

**14 What is a *product stewardship logo***

- (1) This section sets out what is a *product stewardship logo*.

Section 15

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*Artistic works*

- (2) An artistic work is a **product stewardship logo** if:
- (a) copyright subsists in the artistic work; and
  - (b) the Commonwealth is the owner of the copyright in the artistic work; and
  - (c) the artistic work is designated by the Minister under subsection (4).

*Trade marks*

- (3) A trade mark is a **product stewardship logo** if:
- (a) the trade mark is registered under the *Trade Marks Act 1995*; and
  - (b) the Commonwealth is the registered owner of the trade mark for the purposes of that Act; and
  - (c) the trade mark is designated by the Minister under subsection (4) of this section.

*Designation by Minister*

- (4) The Minister may, by legislative instrument, designate:
- (a) for the purposes of paragraph (2)(c)—an artistic work reproduced in the instrument; and
  - (b) for the purposes of paragraph (3)(c)—a trade mark represented in the instrument.

**15 What are the Commonwealth's *intellectual property rights* in a product stewardship logo**

The Commonwealth's *intellectual property rights* in a product stewardship logo are:

- (a) if the product stewardship logo is an artistic work—the Commonwealth's right under the *Copyright Act 1968* to do an act comprised in the copyright of the artistic work; and
- (b) if the product stewardship logo is a trade mark—the rights held by the Commonwealth as the registered owner of the trade mark under the *Trade Marks Act 1995*.

## **16 Commonwealth's intellectual property rights not limited**

This Part does not limit:

- (a) the Commonwealth's intellectual property rights in a product stewardship logo; or
- (b) the operation of the *Copyright Act 1968* or the *Trade Marks Act 1995*.

## **Part 3—Co-regulatory product stewardship**

### **Division 1—Guide to this Part**

#### **17 Guide to this Part**

This Part is about co-regulatory product stewardship.

Under Division 2, some manufacturers, importers, distributors and users of products (called liable parties) are required to be members of co-regulatory arrangements approved by the Minister (see section 18). Liable parties are specified in the regulations (see section 19).

These arrangements must have outcomes, specified in the regulations, that are designed to further the objects of this Act (see section 21).

Administrators of approved co-regulatory arrangements are required to take all reasonable steps to ensure those outcomes are achieved in accordance with the regulations (see section 23).

Before regulations are made specifying liable parties in relation to a class of products, the Minister must be satisfied that, among other things:

- (a) making the regulations will further the objects of this Act; and
- (b) the product stewardship criteria are satisfied.

Division 2 also contains requirements for liable parties and administrators of co-regulatory arrangements relating to record-keeping, giving information and reporting (see section 24).

Division 3 deals with approving co-regulatory arrangements.

Division 4 deals with reviewing co-regulatory arrangements and cancelling approvals.

Division 5 contains special rules for enforcing approved co-regulatory arrangements. These include the ability to give improvement notices to administrators, and requiring arrangements to be audited.

Division 6 deals with other matters relating to co-regulatory product stewardship, such as anti-avoidance, replacing the administrator of an arrangement and constitutional limitations.

**Division 2—Requirements for liable parties and administrators of co-regulatory arrangements**

**Subdivision A—Requirement for liable party to be member of approved co-regulatory arrangement**

**18 Liable party to be member of approved co-regulatory arrangement**

- (1) A liable party in relation to a class of products must be a member of an approved co-regulatory arrangement in relation to that class of products.

Civil penalty: 200 penalty units.

Note 1: For liable parties, see section 19.

Note 2: For approved co-regulatory arrangements, see sections 20, 21 and 22.

Note 3: For approval of co-regulatory arrangements, see Division 3.

Note 4: For additional requirements for liable parties, see Subdivision C of this Division.

*Minister to give notice before applying for civil penalty order*

- (2) The Minister cannot apply for a civil penalty order in relation to a contravention of subsection (1) by a person unless:
- (a) the Minister has given the person a written notice requiring the person to become a member of an arrangement referred to in subsection (1) before the day specified in the notice; and
  - (b) the person has failed to comply with the notice.
- (3) The day specified in the notice must be at least 14 days after the day the notice is given.

*Variation and revocation of notice*

- (4) A person to whom a notice has been given under subsection (2) may apply to the Minister to:
- (a) vary the notice to specify a later day; or

- (b) revoke the notice.
- (5) The application must be:
  - (a) in writing; and
  - (b) made before the day specified in the notice under subsection (2).
- (6) The Minister may, by written notice given to the person:
  - (a) if paragraph (4)(a) applies—vary the notice under subsection (2) to specify a later day; or
  - (b) if paragraph (4)(b) applies—revoke the notice under subsection (2).
- (7) Otherwise, the Minister must refuse the application.
- (8) Subsections (4) and (6) do not affect the operation of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a notice under subsection (2).

*Continuing contraventions*

- (9) Section 59 (continuing contraventions) applies in relation to subsection (1) of this section as if the liable party were required by that subsection to be a member of an approved co-regulatory arrangement before the day specified in the notice under subsection (2) of this section.

## **19 Who is a *liable party* in relation to a class of products**

*Regulations may specify liable parties*

- (1) A ***liable party***, in relation to a class of products, is a person in a class (or classes) of persons specified as liable parties in relation to that class of products in regulations made for the purposes of this subsection.
- (2) However, a person is only a ***liable party*** in relation to a class of products if the person has at any time:
  - (a) manufactured a product in that class in Australia; or
  - (b) imported a product in that class into Australia; or
  - (c) distributed a product in that class in Australia; or

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(d) used a product in that class in Australia.

*Satisfying product stewardship criteria and furthering objects etc.*

- (3) Before the Governor-General makes regulations for the purposes of subsection (1) in relation to a class of products, the Minister must be satisfied that:
- (a) making the regulations in relation to the class of products will further the objects of this Act (see section 4); and
  - (b) the product stewardship criteria are satisfied in relation to the class of products (see section 5); and
  - (c) if regulations made for the purposes of subsection (1) are not already in force in relation to the class of products:
    - (i) the class of products has been notified in accordance with subsection (3A) no later than 12 months beforehand; or
    - (ii) there are special circumstances justifying the making of the regulations without that notification.

Note: For a limitation on the power to make regulations under this Part, see section 34 (constitutional connection).

- (3A) For the purposes of subparagraph (3)(c)(i), a class of products must be notified by being included in a list or notice, published on the Department's website, of classes of products in relation to which the Minister is proposing to consider whether some form of accreditation or regulation under this Act might be appropriate.
- (3B) If the Governor-General makes regulations to which subparagraph (3)(c)(ii) applies in relation to a class of products, the regulations must, when laid before both Houses of Parliament under section 38 of the *Legislative Instruments Act 2003*, be accompanied by a statement, prepared by the Minister, setting out the special circumstances mentioned in that subparagraph.

*Exempting liable parties*

- (4) The regulations may provide for the Minister to determine that this Act has effect as if a particular person who would otherwise have been a liable party in relation to a class of products were not such a liable party during a particular or an indefinite period.

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Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

- (5) A determination referred to in subsection (4) has effect accordingly.

## **20 What is an *approved co-regulatory arrangement***

### *Approved co-regulatory arrangements*

- (1) An ***approved co-regulatory arrangement*** is a co-regulatory arrangement that is approved by the Minister under section 26 in relation to a class of products.

### *Co-regulatory arrangements*

- (2) A ***co-regulatory arrangement*** is an arrangement (however described) in relation to which the following conditions are satisfied:
- (a) the arrangement is designed to achieve the outcomes specified under section 21 in relation to a class of products;
  - (b) the arrangement deals with the matters specified in regulations made under section 22 (if any) in relation to that class of products;
  - (c) the arrangement provides for there to be one or more members of the arrangement;
  - (d) only a liable party may, under the arrangement, be a member of the arrangement;
  - (e) the arrangement provides for there to be a person (the ***administrator***) who:
    - (i) is responsible for ensuring the outcomes referred to in paragraph (a) are achieved; and
    - (ii) may also be a member of the arrangement;
  - (f) the administrator is a body corporate.

## **21 Outcomes for co-regulatory arrangements**

- (1) Regulations made under subsection 19(1) specifying liable parties in relation to a class of products must also specify one or more

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outcomes to be achieved by a co-regulatory arrangement that relates to that class of products.

- (2) The regulations may also do one or more of the following:
  - (a) specify a method or formula by reference to which such an outcome may be determined, or for working out whether such an outcome has been achieved;
  - (b) require different outcomes to be achieved by the end of different periods;
  - (c) specify requirements for achieving those outcomes with which the administrator must comply.
- (3) Outcomes specified under subsection (1) must relate to one or more of the following:
  - (a) avoiding generating waste from products;
  - (b) reducing or eliminating the amount of waste from products to be disposed of;
  - (c) reducing or eliminating hazardous substances in products and in waste from products;
  - (d) managing waste from products as a resource;
  - (e) ensuring that products and waste from products are reused, recycled, recovered, treated and disposed of in a safe, scientific and environmentally sound way.

Note: For an additional limitation on the power to make regulations under this Part, see section 34 (constitutional connection).

**22 Matters to be dealt with by co-regulatory arrangements**

- (1) The regulations may specify matters to be dealt with by a co-regulatory arrangement that relates to a specified class of products.
  - (2) Those matters must relate to one or more of the following:
    - (a) the governance of the arrangement (including resolving disputes and replacing the administrator);
    - (b) membership of the arrangement (including requirements for becoming or ceasing to be a member of the arrangement);
    - (c) communicating information to the public about the arrangement;
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- (d) any other matter relevant to the operation of the arrangement or the achievement of the outcomes specified under section 21 in relation to that class of products.

Note 1: Approval of a co-regulatory arrangement must be refused, and may be cancelled, if the Minister is not satisfied the arrangement adequately deals with these matters (see paragraphs 26(2)(c) and 28(1)(c)).

Note 2: For a limitation on the power to make regulations under this Part, see section 34 (constitutional connection).

### **Subdivision B—Requirements for administrators of approved co-regulatory arrangements**

#### **23 Administrator to achieve outcomes for co-regulatory arrangement**

The administrator of an approved co-regulatory arrangement in relation to a class of products must:

- (a) take all reasonable steps to ensure that the arrangement achieves the outcomes specified under section 21 in relation to that class of products; and
- (b) comply with any requirements specified in regulations made under that section for achieving those outcomes.

Note 1: The Minister may give an improvement notice under section 29 and require an audit of the arrangement to be carried out under section 30 if the administrator does not comply with this section.

Note 2: The Minister may cancel the arrangement's approval if the administrator does not comply with this section (see section 28).

Note 3: For additional requirements for administrators, see Subdivision C of this Division.

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**Subdivision C—Requirements for liable parties and administrators**

**24 Requirements relating to record-keeping, giving information and reporting**

*Record-keeping and giving information*

- (1) The regulations may require a person who is a liable party in relation to a class of products, or the administrator of an approved co-regulatory arrangement in relation to a class of products, to do either or both of the following:
  - (a) make and keep records, in accordance with the regulations;
  - (b) give information to the Minister or an inspector, in accordance with the regulations.

Note: The Minister may cancel a co-regulatory arrangement's approval if the administrator of the arrangement does not comply with regulations made under this section (see section 28).

- (2) The records and information must relate to:
  - (a) products in that class; or
  - (b) an approved co-regulatory arrangement of which the person is a member or the administrator.
- (3) Without limiting paragraph (1)(b), the regulations may require the administrator of an approved co-regulatory arrangement to notify the Minister or an inspector of specified matters, including:
  - (a) material changes of circumstances; and
  - (b) changes to the operation or membership of the arrangement.

*Reporting*

- (4) The regulations may require the administrator of an approved co-regulatory arrangement to give the Minister reports on the operation of the arrangement, in accordance with the regulations.

*Civil penalty provisions*

- (5) Without limiting subsection (1) or (4), the regulations may make provision in relation to pecuniary penalties not exceeding:

- (a) in the case of a body corporate—250 penalty units; or
  - (b) in any other case—50 penalty units;
- for contravening civil penalty provisions in regulations made for the purposes of those subsections.

## **Division 3—Approving co-regulatory arrangements**

### **25 Approving co-regulatory arrangements—application**

- (1) The administrator of a co-regulatory arrangement may apply for the Minister to approve the arrangement in relation to a class of products, specified under section 19, to which the arrangement relates.
- (2) The application must be accompanied by a written description of the arrangement that sets out:
  - (a) how the arrangement proposes to achieve the outcomes specified under section 21 in relation to the class of products; and
  - (b) the matters dealt with by the arrangement; and
  - (c) any other matter specified in regulations made for the purposes of this paragraph.

Note: See sections 102 and 103 for additional matters relating to applications.

### **26 Approving co-regulatory arrangements—decision**

#### *Minister to approve or refuse to approve arrangement*

- (1) The Minister must, on application under section 25, either:
  - (a) approve the arrangement in relation to a class of products to which the arrangement relates; or
  - (b) refuse to approve the arrangement in relation to that class.

#### *When Minister must refuse to approve arrangement*

- (2) The Minister must refuse to approve the arrangement in relation to the class of products if the Minister is satisfied that:
  - (a) a condition in subsection 20(2) (what is a co-regulatory arrangement) is not satisfied in relation to the arrangement; or

- (b) the arrangement is unlikely to achieve one or more of the outcomes specified under section 21 for the class of products; or
- (c) the arrangement does not adequately deal with any matters specified for the class of products in regulations made under section 22; or
- (d) the administrator is not a fit and proper person (see subsection (3)); or
- (e) it is not in the public interest to approve the arrangement (see subsection (4)).

*Fit and proper person*

- (3) For the purposes of paragraph (2)(d), in determining whether the administrator is a fit and proper person, the Minister:
  - (a) must have regard to the matters specified in regulations made for the purposes of this subsection; and
  - (b) may have regard to any other matter.

*Public interest*

- (4) For the purposes of paragraph (2)(e), in determining whether it is in the public interest to approve the arrangement, the Minister:
  - (a) must have regard to the objects of this Act; and
  - (b) may have regard to any other matter.

*When Minister may refuse to approve arrangement*

- (5) The Minister may refuse to approve the arrangement in relation to the class of products if:
  - (a) the applicant has not given the Minister further documentation or information before the day specified in a notice given under section 103 in relation to the application; or
  - (b) the documentation or other information provided in the application, or as requested by a notice under section 103, is false or misleading.

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*Notice of decision*

- (6) The Minister must give the applicant written notice of his or her decision on the application.

## **Division 4—Reviewing co-regulatory arrangements and cancelling approvals**

### **27 Reviewing approved co-regulatory arrangements**

- (1) The Minister must review the operation of an approved co-regulatory arrangement before the end of:
  - (a) the period of 5 years starting on the day the arrangement is approved; and
  - (b) each successive 5 year period.
- (2) Subsection (1) does not limit:
  - (a) the Minister’s ability to review the operation of an approved co-regulatory arrangement at any other time; or
  - (b) the Minister’s power under section 28 to cancel the approval of a co-regulatory arrangement.

### **28 Cancelling approvals of co-regulatory arrangements**

#### *General grounds for cancelling arrangement’s approval*

- (1) The Minister may cancel the approval of a co-regulatory arrangement in relation to a class of products if the Minister is satisfied that:
  - (a) a condition in subsection 20(2) (what is a co-regulatory arrangement) is not satisfied in relation to the arrangement; or
  - (b) the arrangement has not achieved, or is unlikely to achieve, one or more of the outcomes specified under section 21 for the class of products; or
  - (c) the arrangement does not adequately deal with any matters specified for the class of products in regulations made under section 22; or
  - (d) the arrangement’s administrator is not a fit and proper person (see subsection (2)); or
  - (e) the arrangement’s administrator has not complied with one or more of the following in relation to the arrangement:

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- (i) section 23 (which requires the administrator to take reasonable steps to achieve the outcomes referred to in paragraph (b) in accordance with the regulations);
- (ii) regulations made under section 24 (requirements relating to record-keeping, giving information and reporting);
- (iii) an improvement notice given under section 29;
- (iv) subsection 31(1) (which requires the administrator to appoint an auditor and arrange for the auditor to carry out an audit of the arrangement); or
- (f) subsection 33(1) (replacing administrator) has not been complied with in relation to the arrangement; or
- (g) there has been a material change in circumstances since the arrangement was approved; or
- (h) any of the following information or documentation given to the Minister or an inspector was false or misleading:
  - (i) information or documentation given in connection with the application for approval;
  - (ii) information or documentation given in connection with an application under subsection 33(1) (replacing administrator);
  - (iii) information or documentation given at any other time (whether or not as required by this Act); or
- (i) there is a ground for cancelling the approval specified in regulations made for the purposes of this paragraph.

*Fit and proper person*

- (2) For the purposes of paragraph (1)(d), in determining whether the administrator is a fit and proper person, the Minister:
  - (a) must have regard to the matters specified in regulations made for the purposes of this subsection; and
  - (b) may have regard to any other matter.

*Cancelling arrangement's approval on application by administrator*

- (3) The Minister may cancel the approval of a co-regulatory arrangement if the administrator of the arrangement applies for the Minister to do so.

Note: See sections 102 and 103 for additional matters relating to applications.

## Division 5—Enforcing approved co-regulatory arrangements

### 29 Improvement notices

- (1) The Minister may give an administrator of an approved co-regulatory arrangement an improvement notice if the Minister:
  - (a) believes on reasonable grounds that the administrator has contravened section 23 (administrator to achieve outcomes); and
  - (b) is satisfied that it is in the public interest to do so.
- (2) The notice must:
  - (a) specify the contravention that the Minister believes is occurring, and set out the reasons for that belief; and
  - (b) specify a reasonable period within which the administrator must take the action necessary to prevent any further contravention of section 23.
- (3) The notice may specify action that the administrator must take during that specified period.
- (4) Before the end of the specified period, the Minister may extend that period in writing.

#### *Varying or revoking a notice*

- (5) If the Minister is satisfied that it is in the public interest to vary or revoke an improvement notice given under subsection (1) (the **original notice**), the Minister may do so by giving a written notice (the **new notice**) to the administrator.
- (6) If the original notice is varied, the new notice must set out the text of the original notice and the variations to it.

*Civil penalty provision*

- (7) An administrator must comply with an improvement notice given to the administrator under subsection (1).

Civil penalty: 100 penalty units.

**30 Directed audits—general**

- (1) The Minister may require an administrator of an approved co-regulatory arrangement to carry out an audit of the arrangement if the Minister believes on reasonable grounds that the administrator has not complied, or is unlikely to comply, with:
- (a) section 23 (administrator to achieve outcomes); or
  - (b) an improvement notice given to the administrator under section 29.
- (2) The requirement must be included in a written notice given to the administrator.
- (3) The notice must specify:
- (a) the matters to be covered by the audit; and
  - (b) the form of the audit report and the kinds of particulars it is to contain; and
  - (c) the time before which the report must be given to the Minister.

**31 Directed audits—appointing auditor and carrying out audit**

- (1) If the Minister gives an administrator of an approved co-regulatory arrangement a notice under section 30, the administrator must appoint an auditor and arrange for the auditor to carry out an audit in accordance with the notice.
- (2) An administrator who is given a notice under section 30 must comply with subsection (1) of this section.

Civil penalty: 100 penalty units.

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- (3) The administrator must not appoint a person to be an auditor unless the Minister has approved the person for such appointment before the appointment is made.
- (4) The administrator must not appoint an officer or employee of the administrator to be an auditor.
- (5) An appointment of a person as an auditor made otherwise than in accordance with subsections (3) and (4) has no effect.

## **Division 6—Other matters relating to co-regulatory product stewardship**

### **32 Co-regulatory product stewardship—anti-avoidance**

*Minister may determine Act has effect as if person were a liable party*

- (1) The Minister may, by writing, determine that this Act has effect, and is taken always to have had effect, during a period as if a specified person (the *prospective liable party*) were a liable party in relation to a specified class of products in relation to which regulations have been made under subsection 19(1).

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

*Conditions for making determination—avoidance scheme etc.*

- (2) However, the Minister may only make the determination if:
- (a) at any time after the commencement of this Act, one or more persons (whether or not the prospective liable party) engaged in any or all of the following conduct:
    - (i) entering into a scheme;
    - (ii) beginning to carry out a scheme;
    - (iii) carrying out a scheme; and
  - (b) the Minister believes, on reasonable grounds, that any person who engaged in that conduct did so for the purpose (or for purposes that included the substantial purpose) of enabling the prospective liable party to avoid being a liable party in relation to the class of products; and
  - (c) if the regulations specifying the liable parties in relation to the class of products are made in accordance with paragraph 34(1)(a) (constitutional connection)—the prospective liable party is a constitutional corporation.

*Determination has effect*

- (3) The determination has effect accordingly.

*Period during which determination has effect*

- (4) The period referred to in subsection (1):
- (a) may be a specified or an indefinite period; and
  - (b) must not begin before the day the regulations specifying the liable parties in relation to the class of products came into force.

*Determination not a legislative instrument*

- (5) A determination made under subsection (1) is not a legislative instrument.

*Meaning of scheme*

- (6) In this Act, *scheme* means:
- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
  - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

### **33 Co-regulatory product stewardship—replacing administrator**

*Minister's consent required for appointment of new administrator*

- (1) A person cannot be appointed to replace an administrator of an approved co-regulatory arrangement unless the Minister, on application by the person, consents to the appointment.

Note 1: See sections 102 and 103 for additional matters relating to applications.

Note 2: The Minister may cancel the arrangement's approval if this subsection is not complied with (see section 28).

*Determining whether to consent*

- (2) The Minister must refuse to consent to the appointment if the Minister is satisfied that:
- (a) the Minister would not have approved the arrangement if the person had been the administrator at the time the application for approval of the co-regulatory arrangement was made; or
  - (b) there is a ground for refusing to consent to the appointment specified in regulations made for the purposes of this paragraph.

Note: For approval requirements relating to administrators, see:  
(a) paragraph 20(2)(f) (administrator to be a body corporate); and  
(b) paragraph 26(2)(d) (administrator to be a fit and proper person).

- (3) The Minister may refuse to consent to the appointment if:
- (a) the person has not given the Minister further documentation or information before the day specified in a notice given under section 103 in relation to the application under subsection (1) of this section; or
  - (b) the documentation or other information provided in the application under subsection (1) of this section, or as requested by a notice under section 103, is false or misleading.
- (4) Otherwise, the Minister must consent to the appointment.

*Notice of decision*

- (5) The Minister must give the person written notice of the Minister's decision on an application under subsection (1).

**34 Co-regulatory product stewardship—constitutional connection**

- (1) Either or both of the following must apply in relation to regulations made under this Part in relation to a class of products, or co-regulatory arrangements that relate to a class of products:
- (a) each liable party in relation to the class of products is a constitutional corporation;

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- (b) the regulations are appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (2) Regulations made under this Part in relation to a class of products, or co-regulatory arrangements that relate to a class of products, must:
  - (a) specify whether they are made in accordance with paragraph (1)(a) or (b); and
  - (b) if they are made in accordance with paragraph (1)(b)—identify the agreement referred to in that paragraph.

**35 Co-regulatory product stewardship—reading down provision for administrators**

In addition to its effect apart from this section, this Act also has the effect it would have if the administrator of a co-regulatory arrangement were, by express provision, required to be a constitutional corporation.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

## **Part 4—Mandatory product stewardship**

### **Division 1—Guide to this Part**

#### **36 Guide to this Part**

This Part is about mandatory product stewardship.

This involves enabling regulations to be made that would require some persons to take, or not to take, specified action in relation to products (see section 37).

These requirements might include restricting the manufacture or import of products, prohibiting products from containing particular substances, labelling and packaging requirements and other requirements relating to reusing, recycling, recovering, treating or disposing of products.

Before regulations are made in relation to a class of products, the Minister must be satisfied that, among other things:

- (a) making the regulations will further the objects of this Act; and
- (b) the product stewardship criteria are satisfied.

## **Division 2—Mandatory product stewardship**

### **37 Mandatory product stewardship requirements may be specified in regulations**

*Basic rule—requiring person to take, or not take, specified action*

- (1) The regulations may require one or more specified persons, or classes of person, to take, or not to take, specified action in relation to a product, or products, in a specified class.
- (2) The action must relate to one or more of the following:
  - (a) avoiding generating waste from products;
  - (b) reducing or eliminating the amount of waste from products to be disposed of;
  - (c) reducing or eliminating hazardous substances in products and in waste from products;
  - (d) managing waste from products as a resource;
  - (e) ensuring that products and waste from products are reused, recycled, recovered, treated and disposed of in a safe, scientific and environmentally sound way.

Note: For limitations on the power to make regulations under this Part, see sections 39 (satisfying product stewardship criteria and furthering objects) and 40 (constitutional connection).

*Specific action covered by subsection (1)*

- (3) Without limiting subsection (1), regulations made for the purposes of that subsection in relation to a class of products may do any or all of the following:
  - (a) prohibit (either absolutely or subject to conditions), limit, restrict or otherwise affect the manufacture, import, export, distribution or use of a product in that class;
  - (b) prohibit (either absolutely or subject to conditions), limit or restrict substances from being contained in a product in that class;

- (c) require a product in that class to be labelled or marked in accordance with the regulations;
  - (d) specify requirements in relation to packaging a product in that class;
  - (e) specify requirements in relation to communicating information, in accordance with the regulations, in connection with distributing, reusing, recycling, recovering, treating or disposing of a product in that class;
  - (f) require a person to make a product return payment in relation to a product in that class (see subsection (5));
  - (g) specify other requirements in relation to reusing, recycling, recovering, treating or disposing of a product in that class;
  - (h) require a person to keep records relating to a product in that class in accordance with the regulations;
  - (i) require a person to give the Minister specified information relating to a product in that class in accordance with the regulations;
  - (j) provide for the Minister to exempt a specified person from a requirement specified in regulations made for the purposes of that subsection.
- (4) The paragraphs of subsection (3) do not limit each other.

*Meaning of **product return payment***

- (5) A **product return payment** is a payment, of an amount specified in the regulations in relation to a class of products, that a person is required to make to another person if the other person returns a product in that class for reuse, recycling, recovery, treatment or disposal.

Note: The Minister must be satisfied of certain matters before regulations are made requiring a person to pay a product return payment in relation to a product: see paragraph 39(1)(c).

*Product return payment not taxation*

- (6) Regulations made for the purposes of subsection (1) that require a person to make a product return payment must not amount to taxation.

### **38 Contravening mandatory product stewardship requirements**

#### *Offences and civil penalties in regulations*

- (1) The regulations may make provision in relation to:
  - (a) penalties not exceeding a fine of 50 penalty units for offences against regulations made under subsection 37(1) (mandatory product stewardship requirements); and
  - (b) pecuniary penalties not exceeding:
    - (i) in the case of a body corporate—1,000 penalty units; or
    - (ii) in any other case—200 penalty units;for contravening civil penalty provisions in regulations made under subsection 37(1).

#### *Infringement notices in regulations*

- (2) The regulations may provide for a person who is alleged to have:
  - (a) committed an offence against regulations made under subsection 37(1) (mandatory product stewardship requirements) that is stated to be an offence of strict liability; or
  - (b) contravened a civil penalty provision in those regulations; to pay a penalty to the Commonwealth as an alternative to civil proceedings or prosecution (as the case requires).
- (3) The penalty must not exceed:
  - (a) for an offence—one-fifth of the maximum penalty for committing the offence; or
  - (b) for a civil penalty provision—one-tenth of the maximum pecuniary penalty for contravening the civil penalty provision.

### **39 Mandatory product stewardship—satisfying product stewardship criteria and furthering objects etc.**

- (1) Before the Governor-General makes regulations for the purposes of section 37 in relation to a class of products, the Minister must be satisfied that:

- (a) making the regulations in relation to the class of products will further the objects of this Act (see section 4); and
- (b) the product stewardship criteria are satisfied in relation to the class of products (see section 5); and
- (c) if the regulations would require a person to make a product return payment in relation to a product in that class:
  - (i) making the regulations will encourage reusing, recycling, recovering, treating or disposing of products in that class, or waste from such products, in a safe, scientific and environmentally sound way; and
  - (ii) the persons required to make product return payments in relation to products in that class are likely to be appropriately compensated; and
- (d) if regulations made for the purposes of section 37 are not already in force in relation to the class of products:
  - (i) the class of products has been notified in accordance with subsection (2) no later than 12 months beforehand; or
  - (ii) there are special circumstances justifying the making of the regulations without that notification.

Example: For subparagraph (c)(ii), the persons would be appropriately compensated if they:

- (a) are able to pass the costs of the payments on to consumers; or
  - (b) will be reimbursed for the payments by other participants in the supply chain for the product.
- (2) For the purposes of subparagraph (1)(d)(i), a class of products must be notified by being included in a list or notice, published on the Department's website, of classes of products in relation to which the Minister is proposing to consider whether some form of accreditation or regulation under this Act might be appropriate.
- (3) If the Governor-General makes regulations to which subparagraph (1)(d)(ii) applies in relation to a class of products, the regulations must, when laid before both Houses of Parliament under section 38 of the *Legislative Instruments Act 2003*, be accompanied by a statement, prepared by the Minister, setting out the special circumstances mentioned in that subparagraph.

**40 Mandatory product stewardship—constitutional connection**

- (1) One or more of the following must apply in relation to regulations made under this Part in relation to a class of products:
  - (a) the regulations are expressed only to apply in relation to action taken, or not taken, by a constitutional corporation;
  - (b) the regulations are expressed only to apply in relation to the taking of action in the course of constitutional trade or commerce;
  - (c) the regulations are appropriate and adapted to give effect to Australia's obligations under an agreement with one or more other countries.
- (2) Regulations made under this Part in relation to a class of products must:
  - (a) specify whether they are made in accordance with paragraph (1)(a), (b) or (c); and
  - (b) if they are made in accordance with paragraph (1)(c)—identify the agreement referred to in that paragraph.

## **Part 5—Enforcing this Act**

### **Division 1—Guide to this Part**

#### **41 Guide to this Part**

This Part deals with enforcing this Act, including regulations and legislative instruments made under it.

Division 2 allows courts to order persons to pay pecuniary penalties for contravening provisions of this Act called civil penalty provisions.

Division 3 allows contraventions of this Act and adverse decisions (such as cancelling an arrangement's accreditation or approval) to be publicised.

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

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

## **Division 2—Civil penalty provisions**

### **Subdivision A—Obtaining a civil penalty order**

#### **42 Civil penalty orders**

##### *Application for order*

- (1) Within 6 years of a person contravening a civil penalty provision in this Act, the Minister may apply to a relevant court for an order that the person pay the Commonwealth a pecuniary penalty.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

- (2) If the court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay the Commonwealth a pecuniary penalty.
- (3) An order under subsection (2) is a *civil penalty order*.
- (4) The pecuniary penalty payable under subsection (2) must not be more than the amount worked out under section 43.

##### *Relevant matters in determining pecuniary penalty*

- (5) In determining the pecuniary penalty, the court may have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
  - (e) the extent to which the person has cooperated with the authorities; and
  - (f) if the person is a body corporate:

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

### **43 Maximum amount of pecuniary penalty**

#### *General rule*

- (1) The pecuniary penalty payable by a person under a civil penalty order must not be more than the following amount (unless subsection (2), (3) or (4) applies):
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision;
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.

#### *Special rule—continuing contraventions*

- (2) The maximum amount payable under subsection (1) is increased in accordance with subsection 59(3) (continuing contraventions), if that subsection applies.

#### *Special rule—not being member of approved co-regulatory arrangement*

- (3) The pecuniary penalty payable by a person under a civil penalty order for a contravention of subsection 18(1) (liable party to be member of approved co-regulatory arrangement) must not be more than the greater of the following amounts:
  - (a) the maximum amount that would, apart from this subsection, have been payable by the person in accordance with subsections (1) and (2) of this section;
  - (b) an amount equal to the total value of any benefits obtained by the person that are reasonably attributable to the contravention, if the court can determine that amount.

*Special rule—civil liability of executive officer of body corporate*

- (4) The pecuniary penalty payable by a person under a civil penalty order for a contravention of subsection 51(1) (civil liability of executive officer of body corporate) must not be more than the amount worked out under subsection 51(3).

**44 Involvement in contravening civil penalty provision**

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

*Civil penalty*

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

**45 Civil enforcement of penalty**

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

#### **46 Conduct contravening more than one civil penalty provision**

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

#### **47 Multiple contraventions**

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

Note: For continuing contraventions of civil penalty provisions, see section 59.

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

#### **48 Proceedings may be heard together**

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

#### **49 Civil evidence and procedure rules for civil penalty orders**

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

#### **50 Contravening a civil penalty provision is not an offence**

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

## **Subdivision B—Civil liability of executive officers of bodies corporate**

### **51 Civil liability of executive officer of body corporate**

*Civil penalty provision for executive officer—contravention of civil penalty provision by body corporate*

- (1) An executive officer of a body corporate contravenes this subsection if:
  - (a) the body corporate contravenes:
    - (i) subsection 18(1) (liable party to be member of approved co-regulatory arrangement); or
    - (ii) a civil penalty provision in regulations made under subsection 37(1) (mandatory product stewardship requirements); and
  - (b) the officer knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (2) Subsection (1) is a civil penalty provision.

*Amount of pecuniary penalty*

- (3) The maximum pecuniary penalty payable for a contravention of subsection (1) is the maximum pecuniary penalty payable by an individual for contravening the civil penalty provision contravened by the body corporate.

*Meaning of executive officer*

- (4) An **executive officer** of a body corporate is a person (by whatever name called and whether or not a director of the body) who is concerned in, or takes part in, the management of the body.

*Meaning of reckless*

- (5) For the purposes of subsection (1), the officer is **reckless** as to whether the contravention would occur if:
- (a) the officer is aware of a substantial risk that the contravention would occur; and
  - (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.

*Meaning of negligent*

- (6) For the purposes of subsection (1), the officer is **negligent** as to whether the contravention would occur if the officer's conduct involves:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
  - (b) such a high risk that the contravention would occur; that the conduct merits the imposition of a pecuniary penalty.

## **52 Reasonable steps to prevent contravention**

- (1) For the purposes of section 51, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention of a civil penalty provision, a court may have regard to all relevant matters, including:
- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
    - (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with civil penalty provisions;
    - (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
    - (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions (in so far as those requirements affect the employees, agents or contractors concerned); and

(b) what action (if any) the officer took when he or she became aware of the contravention.

(2) This section does not limit section 51.

### **Subdivision C—Civil proceedings and criminal proceedings**

#### **53 Civil proceedings after criminal proceedings**

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

#### **54 Criminal proceedings during civil proceedings**

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

#### **55 Criminal proceedings after civil proceedings**

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

## **56 Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct that was claimed to constitute the contravention.
- (2) However, subsection (1) does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

## **Subdivision D—Miscellaneous**

### **57 Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

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- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

**58 State of mind**

- (1) In the proceedings for a civil penalty order for a contravention of a civil penalty provision in this Act, it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of:
  - (a) section 51 (civil liability of executive officer of body corporate); or
  - (b) section 57 (mistake of fact).

**59 Continuing contraventions**

- (1) This section applies if an act or thing is required, under a civil penalty provision, to be done within a particular period, or before a particular time.

*Obligation to do act or thing continues*

- (2) The obligation to do that act or thing continues (even if the period has expired or the time has passed) until the act or thing is done.

*Maximum amount of pecuniary penalty increased*

- (3) The maximum amount of the pecuniary penalty payable under subsection 43(1) by a person for contravening the civil penalty provision is increased, by an amount equal to 10% of the pecuniary

penalty specified for the provision, for each day on which the person fails to comply with the requirement (including the day of the making of a relevant civil penalty order).

### **Division 3—Publicising offences, contraventions and decisions**

#### **60 Minister may publicise certain offences, contraventions and decisions**

- (1) The Minister may publicise, in any way he or she thinks appropriate, any or all of the following:
  - (a) an offence against this Act of which a person has been convicted, and the person's name;
  - (b) a contravention of a civil penalty provision in relation to which a civil penalty order has been made against a person, and the person's name;
  - (c) the acceptance of an undertaking given under section 61 by a person, the terms of the undertaking, and the person's name;
  - (d) a breach of an undertaking given under section 61 in relation to which an order has been made against a person under subsection 62(2), the terms of the order and the person's name;
  - (e) the granting or varying of an injunction under section 63 restraining a person from engaging in conduct, or requiring a person to do an act or thing, the nature of the conduct, act or thing, and the person's name;
  - (f) a decision to:
    - (i) give the administrator of an approved co-regulatory arrangement an improvement notice under section 29; or
    - (ii) give a notice under section 30 requiring the administrator of an approved co-regulatory arrangement to conduct an audit of the arrangement; or
    - (iii) cancel the accreditation of a voluntary arrangement or the approval of a co-regulatory arrangement;
  - (g) the reasons for a decision referred to in paragraph (f);
  - (h) the name of the administrator of an arrangement referred to in paragraph (f).

Note 1: This subsection constitutes an authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

Note 2: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

(2) This Division does not:

- (a) limit the power of the Minister or anyone else to publicise a matter or a person's name; or
- (b) prevent anyone else from publicising a matter or a person's name; or
- (c) affect any obligation (however imposed) on anyone to publicise a matter or a person's name.

## **Division 4—Enforceable undertakings**

### **61 Acceptance of undertakings**

- (1) The Minister may accept any of the following written undertakings:
  - (a) a written undertaking given by a person that the person will take specified action in order to comply with a civil penalty provision, or an offence provision, in this Act;
  - (b) a written undertaking given by a person that the person will refrain from taking specified action in order to comply with a civil penalty provision, or an offence provision, in this Act;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not, or is unlikely to, contravene a civil penalty provision, or an offence provision, in this Act, in the future.

Note 1: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

Note 2: The terms of the undertaking may be publicised under section 60.

#### *Withdrawing and varying undertakings*

- (2) The person may withdraw or vary the undertaking at any time, but only with the written consent of the Minister.

### **62 Enforcement of undertakings**

- (1) The Minister may apply to a relevant court for an order under subsection (2) if the Minister considers that a person who gave an undertaking under section 61 has breached any of its terms.
- (2) The court may make one or more of the following orders if the court is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking within a specified period of time;

- (b) an order directing the person to pay to the Commonwealth, within a specified period of time, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the court considers appropriate directing the person to compensate, within a specified period of time, any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the court considers appropriate.

## Division 5—Injunctions

### 63 Injunctions

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of a civil penalty provision, or an offence provision, in this Act, a relevant court may, on application by the Minister, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do a thing.

Note 1: The court may grant an injunction even if the person does not intend to engage again, and has never previously engaged, in such conduct (see section 66).

Note 2: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

#### *Performance injunctions*

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
  - (b) the refusal or failure was, is or would be a contravention of a civil penalty provision, or an offence provision, in this Act;
- a relevant court may, on application by the Minister, grant an injunction requiring the person to do that thing.

Note: The court may grant an injunction even if the person does not intend to refuse or fail again, and has never previously refused or failed, to do that thing (see section 66).

### 64 Granting interim injunctions

- (1) Before deciding an application for an injunction under section 63, the relevant court may grant an interim injunction if it thinks it desirable.

*No undertaking as to damages*

- (2) The court is not to require the Minister or anyone else to give an undertaking as to damages as a condition of granting an interim injunction.

**65 Discharging or varying injunctions**

A relevant court may discharge or vary an injunction it has granted under this Division.

**66 Certain limits on granting injunctions not to apply**

*Restraining injunction*

- (1) The power, under this Division, to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
- (a) whether or not it appears to a relevant court that the person intends to engage again, or to continue to engage, in such conduct; and
  - (b) whether or not the person has previously engaged in such conduct; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunction*

- (2) The power, under this Division, to grant or vary an injunction requiring a person to do an act or thing may be exercised:
- (a) whether or not it appears to a relevant court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

## **Part 6—Compliance powers**

### **Division 1—Guide to this Part**

#### **67 Guide to this Part**

This Part is about ensuring compliance with this Act, including regulations and instruments made under it.

Division 2 is about the powers of inspectors. These powers may be used for the purposes of determining whether a person is complying with this Act or for the purposes of investigating a possible contravention of this Act.

Division 3 is about gathering information for the purposes of investigating or preventing a contravention of a civil penalty provision or an offence provision in this Act.

## **Division 2—Powers of inspectors**

### **Subdivision A—Appointment of inspectors**

#### **68 Minister may appoint inspectors**

- (1) The Minister may, by writing, appoint an officer or employee of an agency of the Commonwealth, a State or a Territory as an inspector.

##### *Prerequisites to appointment*

- (2) The Minister may appoint a person as an inspector only if the Minister is satisfied that the person has suitable qualifications and experience to exercise the powers and perform the functions of an inspector.
- (3) The Minister must not appoint an officer or employee of an agency as an inspector without the agreement of:
  - (a) if the agency is an agency of the Commonwealth—the agency; and
  - (b) if the agency is an agency of a State or Territory—the State or Territory.

##### *Inspector to comply with directions*

- (4) An inspector must comply with any direction of the Minister while exercising powers or performing functions as an inspector.

Note: Part 7.8 of the *Criminal Code* provides offences in relation to causing harm to, and impersonation and obstruction of, Commonwealth public officials.

- (5) The Minister may revoke the appointment of a person as an inspector if the person does not comply with a direction given to the person under subsection (4).
- (6) If a direction is given under subsection (4) in writing, the direction is not a legislative instrument.

## **69 Identity cards**

- (1) The Minister must issue an identity card to an inspector appointed under section 68.
- (2) The identity card must:
  - (a) be in the form approved by the Minister; and
  - (b) contain a recent photograph of the inspector.
- (3) An inspector must carry his or her identity card at all times when exercising powers or performing functions as an inspector.
- (4) An inspector is not entitled to exercise any powers under this Division in relation to premises if:
  - (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
  - (b) the inspector fails to comply with the requirement.

## **70 Offence for failing to return identity card**

- (1) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an inspector; and
  - (c) the person does not return the identity card to the Minister as soon as practicable.

Penalty: 1 penalty unit.

- (2) Subsection (1) is an offence of strict liability.

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

*Defence—card lost or destroyed*

- (3) Subsection (1) does not apply if the identity card was lost or destroyed.

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

## **Subdivision B—Powers of inspectors**

### **71 Purposes for which powers can be used**

An inspector may exercise the powers set out in this Subdivision for the following purposes:

- (a) determining whether a person is complying with this Act;
- (b) investigating:
  - (i) a possible contravention of a civil penalty provision in this Act; or
  - (ii) a possible offence against this Act, or against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

### **72 Inspection powers—with consent**

- (1) An inspector may enter premises and exercise the powers set out in subsection (3) if the occupier of the premises consents to the entry and the exercise of those powers.
- (2) Before obtaining consent, the inspector must inform the occupier that he or she may refuse consent, or withdraw consent, at any time.
- (3) For the purposes set out in section 71, an inspector who enters premises in accordance with subsection (1) may do one or more of the following:
  - (a) search the premises and any thing (including a vehicle) on the premises;
  - (b) inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (c) take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
  - (d) inspect any book, record or document on the premises;
  - (e) take extracts from or make copies of any such book, record or document;

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- (f) take onto the premises such equipment and materials as the inspector requires for the purposes of exercising powers in relation to the premises;
- (g) operate equipment on the premises for the purposes of gaining access to a document or record.

Note: Compensation might be payable under section 105 for equipment or data that is damaged or destroyed as a result of operating the equipment.

### **73 Refusing consent is not an offence**

The occupier of premises does not commit an offence if:

- (a) the occupier refuses to allow an inspector to enter, or remain on, the premises; and
- (b) the inspector does not have a warrant to enter the premises.

### **74 Inspection powers—with warrant**

- (1) An inspector may enter premises and exercise the powers set out in subsection (2) if the inspector has a warrant for the entry.

Note: Subdivision D deals with applications for warrants.

- (2) For the purposes set out in section 71, an inspector who enters premises under warrant may do one or more of the following:
  - (a) exercise one or more of the powers set out in subsection 72(3) (subject to subsection (3) of this section);
  - (b) require any person on the premises to:
    - (i) answer any questions put by the inspector; and
    - (ii) produce any book, record or document requested by the inspector;
  - (c) seize or secure any evidential material on the premises.
- (3) An inspector may examine or test material under subsection 72(3) only with the written approval of the Minister if the examination or test might result in:
  - (a) damage or destruction of the material; or
  - (b) a reduction in the material's value.
- (4) A person commits an offence if:

- (a) the person is required to answer a question or produce a book, record or document under paragraph (2)(b); and
- (b) the person does not answer the question or produce the book, record or document.

Penalty for contravention of this subsection: 30 penalty units.

### **75 Announcement before entry under warrant**

- (1) Before entering premises under a warrant, an inspector must:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person on the premises an opportunity to allow entry to the premises.
- (2) An inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
  - (a) the inspector does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises is present at the premises; the inspector must, as soon as practicable after entering the premises, show his or her identity card to the occupier.

### **76 Copy of warrant to be given to occupier**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises is present at the premises, the inspector must:
  - (a) give a copy of the warrant to the occupier; and
  - (b) identify himself or herself to the occupier; and
  - (c) inform the occupier of the rights and responsibilities of the occupier under sections 77 (observing execution of warrant) and 78 (providing facilities and assistance).
- (2) The copy of the warrant does not need to include the signature of the magistrate who issued the warrant.

### **77 Occupier entitled to observe execution of warrant**

- (1) If:
  - (a) a warrant is being executed; and
  - (b) the occupier of the premises is present at the premises;the occupier is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the occupier impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **78 Occupier to provide inspector with facilities and assistance**

- (1) The occupier of premises to which a warrant relates must provide:
  - (a) an inspector executing the warrant; and
  - (b) any person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## **Subdivision C—General provisions relating to seizure**

### **79 Copies of seized things to be provided**

- (1) If a warrant is being executed and an inspector seizes:
  - (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device, the information in which can be readily copied;the inspector must, if requested to do so by the occupier of the premises, give a copy of the thing or the information to the occupier as soon as practicable after the seizure.

- (2) However, subsection (1) does not apply if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

### **80 Receipts for things seized**

- (1) If a thing is seized under this Division, an inspector must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

### **81 Return of seized things**

- (1) Subject to any contrary order of a court, if an inspector seizes a thing under this Division, the Minister must take reasonable steps to return it if:
- (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) the period of 60 days after its seizure ends;
- whichever happens first, unless the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) If, apart from this subsection, the Minister would be required to take reasonable steps to return a thing under subsection (1) because of paragraph (1)(b), the Minister is not required to do so if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the thing may continue to be retained because of an order under section 82; or
  - (c) the Commonwealth, the Minister or an inspector is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

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

### **82 Magistrate may permit a thing to be retained**

- (1) The Minister may apply to a magistrate for an order permitting the retention of the thing for a further period if:
- (a) before the end of 60 days after the seizure; or
  - (b) before the end of a period previously specified in an order of a magistrate under this section;
- proceedings in respect of which the thing may afford evidence have not commenced.

- (2) If the magistrate is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purposes of an investigation in respect of:
    - (i) an offence against this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; or
    - (ii) a contravention of a civil penalty provision; or
    - (iii) both an offence mentioned in subparagraph (i) and a civil penalty provision; or
  - (b) to enable evidence of an offence mentioned in paragraph (a) or a civil penalty provision to be secured for the purposes of a prosecution, civil penalty proceedings or both;
- the magistrate may order that the thing may continue to be retained for a period specified in the order (which must not exceed 3 years).

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

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

### **83 Disposal if thing cannot be returned**

If:

- (a) a thing is seized under this Division; and
  - (b) apart from this section, the Minister would be required to take reasonable steps to return the thing to a person; and
  - (c) either:
    - (i) the Minister cannot, despite making reasonable efforts, locate the person; or
    - (ii) the person has refused to take possession of the thing;
- the Minister may dispose of the thing in such manner as he or she considers appropriate.

Note: If the operation of this section would result in an acquisition of property otherwise than on just terms, see section 106.

### **Subdivision D—Applying for warrants to enter premises**

#### **84 Ordinary warrants**

##### *Application for warrant*

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

##### *Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for either or both of the following purposes:
  - (a) determining whether a person is complying with this Act;
  - (b) investigating:
    - (i) a possible contravention of a civil penalty provision in this Act; or
    - (ii) a possible offence against this Act, or against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: The expression **this Act** has an extended meaning (see the Dictionary in section 6).

- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

*Content of warrant*

- (4) The warrant must:
- (a) authorise the inspector to enter the premises using any assistance and force to enter the premises that is necessary and reasonable; and
  - (b) state whether the entry is authorised to be made at any time of the day or night, or during specified hours of the day or night; and
  - (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

**85 Warrants by telephone, fax etc.**

*Application for warrant*

- (1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 84 if the inspector considers it necessary to do so in an urgent case.
- (2) The magistrate may:
- (a) require communication by voice to the extent that it is practicable in the circumstances; and
  - (b) make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in subsection 84(2) that sets out the grounds on which the warrant is sought.
- (4) The inspector may, if it is necessary to do so, apply for the warrant before the information is sworn or affirmed.

*Issue of warrant*

- (5) The magistrate may complete and sign the same warrant that the magistrate would issue under section 84 if the magistrate is satisfied that there are reasonable grounds for issuing the warrant, after having:
- (a) considered the terms of the information; and
  - (b) received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

*Obligations of magistrate and inspector once warrant issued*

- (6) The magistrate must do the following if the magistrate completes and signs the warrant:
- (a) tell the inspector what the terms of the warrant are;
  - (b) tell the inspector the day on which and the time at which the warrant was signed;
  - (c) tell the inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect;
  - (d) record on the warrant the reasons for issuing the warrant.
- (7) The inspector must do the following if the magistrate completes and signs the warrant:
- (a) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate;
  - (b) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed;
  - (c) send to the magistrate:
    - (i) the form of warrant completed by the inspector; and
    - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) The inspector must send the magistrate the form of warrant and information under subsection (7) by the end of the day after the earlier of:
- (a) the day the warrant expires; or
  - (b) the day the warrant is executed.

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- (9) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the warrant that the magistrate completed and signed; and
  - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 84.

*What a warrant authorises*

- (10) A form of warrant duly completed under subsection (7) is authority for the same powers as are authorised by the warrant signed by the magistrate.

**86 Signed form of warrant not produced in evidence**

A court must assume, unless the contrary is proved, that the exercise of a power was not authorised by a warrant issued under section 85 if:

- (a) it is material, in any proceedings, for the court to be satisfied that the exercise of that power was authorised by that section; and
- (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence.

**Subdivision E—Powers of magistrates**

**87 Federal Magistrates—consent to nomination**

- (1) A Federal Magistrate may, by writing, consent to be nominated by the Minister under subsection (2).
- (2) The Minister may, by writing, nominate a Federal Magistrate in relation to whom a consent is in force under subsection (1) to be a magistrate for the purposes of this Act.

## **88 Powers of magistrates**

### *Powers conferred personally*

- (1) A power conferred on a magistrate by this Division is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

### *Powers need not be accepted*

- (2) The magistrate (other than a Federal Magistrate) need not accept the power conferred.

### *Protection and immunity*

- (3) A magistrate exercising a power conferred by this Division has the same protection and immunity as if he or she were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## Division 3—Information gathering powers

### 89 Meaning of *person who has product stewardship information*

A person is a *person who has product stewardship information* if the Minister believes, on reasonable grounds, that the person is capable of giving information, or producing books, records or documents, relevant for the purposes of investigating or preventing:

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

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

### 90 Minister may require a person to provide information

- (1) The Minister may give a written notice to a person who has product stewardship information requiring the person to give to an inspector specified in the notice:
  - (a) any information that is specified in the notice; or
  - (b) any book, record or document that is specified in the notice.
- (2) The notice must also specify:
  - (a) the day on which the notice is given; and
  - (b) the person to whom the notice is given; and
  - (c) the manner in which the information, book, record or document is to be given; and
  - (d) the period within which, the information, book, record or document is to be given.

The period must end at least 14 days after the notice is given.

- (3) A notice under subsection (1) must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (about giving false or misleading information and producing false or misleading documents).

*Offence for failing to comply with a notice*

- (4) A person commits an offence if:
- (a) the person is required to give information, a book, record or document to an inspector under subsection (1); and
  - (b) the person does not give the inspector the information, book, record or document within the period specified in the notice.

Penalty: 6 months imprisonment.

**91 Minister may require a person to appear before an inspector**

- (1) The Minister may give a written notice to a person who has product stewardship information requiring the person to appear before the inspector specified in the notice:
- (a) to answer any questions put by the inspector; and
  - (b) to produce to the inspector any books, records or documents that are referred to in the notice.

- (2) The notice must also specify:
- (a) the day on which the notice is given; and
  - (b) the person to whom the notice is given; and
  - (c) the time and place at which the person is to appear.
- The time must be at least 14 days after the notice is given.

- (3) A notice under subsection (1) must set out the effect of sections 137.1 and 137.2 of the *Criminal Code* (about giving false or misleading information and producing false or misleading documents).

*Offence for failing to appear*

- (4) A person commits an offence if:
- (a) the person is required to appear before an inspector under subsection (1); and
  - (b) the person does not appear before the inspector.

Penalty: 6 months imprisonment.

**Part 6** Compliance powers

**Division 3** Information gathering powers

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*Offence for failing to answer questions or produce a book, record or document*

- (5) A person commits an offence if:
- (a) the person is required under subsection (1) to appear before an inspector; and
  - (b) when appearing before the inspector, the person does not:
    - (i) answer a question put by the inspector; or
    - (ii) produce a book, record or document to the inspector as required by notice given under that subsection.

Penalty: 6 months imprisonment.

## **Part 7—Reviewing decisions**

### **Division 1—Guide to this Part**

#### **92 Guide to this Part**

This Part is about reviewing some decisions made under this Act (called reviewable decisions).

Reviewable decisions (other than those made by the Minister personally) can be reviewed by the Minister (an internal review).

Reviewable decisions made by the Minister personally or on an internal review can be reviewed by the Administrative Appeals Tribunal.

## Division 2—Reviewing decisions

### 93 Persons affected by reviewable decisions

Column 1 of the table sets out each person *affected* by a reviewable decision. Column 2 of the table sets out the *reviewable decision* that a particular person is affected by.

<b>Persons affected by reviewable decisions</b>		
<b>Item</b>	<b>Person affected</b>	<b>Reviewable decision</b>
1	The administrator of a voluntary arrangement	A decision by an accrediting authority under a determination under section 13 to refuse to accredit the voluntary arrangement in relation to a class of products
2	The administrator of a voluntary arrangement	A decision by an accrediting authority under a determination under section 13 to impose conditions on the voluntary arrangement's accreditation in relation to a class of products
3	The following persons: (a) the administrator of an accredited voluntary arrangement; (b) a person licensed, or authorised, by an accredited voluntary arrangement to exercise the Commonwealth's intellectual property rights in a product stewardship logo	A decision by an accrediting authority under a determination under section 13 to cancel, or refuse to cancel, the accreditation of the voluntary arrangement in relation to a class of products
4	A person who applies to the Minister to vary or revoke a notice given under subsection 18(2)	A decision by the Minister under subsection 18(6) to vary the notice, or to refuse to vary or revoke the notice
5	The administrator of a co-regulatory arrangement	A decision by the Minister under section 26 to refuse to approve the co-regulatory arrangement in

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<b>Persons affected by reviewable decisions</b>		
<b>Item</b>	<b>Person affected</b>	<b>Reviewable decision</b>
		relation to a class of products
6	The administrator of an approved co-regulatory arrangement	A decision by the Minister under section 28 to cancel or to refuse to cancel the approval of the co-regulatory arrangement in relation to a class of products
7	A prospective liable party in relation to whom the Minister has made a determination under section 32	A decision by the Minister under section 32 to make the determination
8	A person who applies for consent under section 33 to the person's appointment as a replacement administrator of an approved co-regulatory arrangement	A decision by the Minister under section 33 to refuse to consent to the appointment

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#### **94 Notification of decisions and review rights**

- (1) As soon as practicable after making a reviewable decision, the person who made the decision must cause a written notice to be given to each person affected by the decision, containing:
  - (a) the terms of the decision; and
  - (b) the reasons for the decision; and
  - (c) a statement setting out particulars of the person's review rights.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

#### **95 Internal review**

- (1) A person affected by a reviewable decision (other than a decision made by the Minister personally) may apply in writing to the Minister for review (the *internal review*) of the decision.

- (2) An application for internal review must be made within:
  - (a) 30 days after the day on which the decision first came to the notice of the applicant; or
  - (b) such further period (if any) as the Minister allows (either before or after the end of that period).
- (3) On receiving an application, the Minister must review the reviewable decision.
- (4) The Minister may:
  - (a) make a decision affirming, varying or revoking the reviewable decision; and
  - (b) if the Minister revokes the decision, make such other decision as the Minister thinks appropriate.

### **96 Review of decisions by Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for review of the following decisions:
  - (a) a reviewable decision made by the Minister personally;
  - (b) an internal review decision made by the Minister under subsection 95(4).
- (2) An application under subsection (1) may be made only by, or on behalf of, a person affected by the reviewable decision.
- (3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

## **Part 8—Protecting information**

### **Division 1—Guide to this Part**

#### **97 Guide to this Part**

This Part is about protecting information (called protected information) obtained by or disclosed to persons in connection with this Act, including regulations and legislative instruments made under it.

Disclosing protected information is an offence if it might substantially prejudice the commercial interests of a person, and the disclosure is not authorised by this Part.

There is also a limitation on the ability of courts and tribunals to require the disclosure of protected information.

## Division 2—Protecting information

### 98 Offence—Disclosing commercially sensitive information

#### *Offence*

- (1) A person commits an offence if:
  - (a) the person discloses protected information to another person;  
and
  - (b) there is a risk that the disclosure might substantially prejudice the commercial interests of a third person.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

#### *Exception—authorised disclosure*

- (2) Subsection (1) does not apply if the disclosure referred to in paragraph (1)(a) is authorised by section 99 (authorised disclosures).

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

#### *Meaning of protected information*

- (3) **Protected information** is information that has been disclosed to, or obtained by, a person in the course of the person performing a function or duty, or exercising a power, under or in relation to this Act.

Note: The expression **this Act** has an extended meaning (see the Dictionary in section 6).

### 99 Authorised disclosures

- (1) A person may disclose protected information if:
  - (a) the disclosure is made for the purposes of:
    - (i) performing a duty or function, or exercising a power, under or in relation to this Act; or

- (ii) enabling another person to perform duties or functions, or exercise powers, under or in relation to this Act; or
  - (iii) assisting in the administration or enforcement of another law of the Commonwealth, a State or a Territory; or
  - (b) the disclosure is required or authorised by or under:
    - (i) a law of the Commonwealth (including this Act); or
    - (ii) a law, of a State or Territory, that is prescribed by the regulations for the purposes of this subparagraph; or
  - (c) the disclosure is expressly or impliedly authorised by the third person referred to in paragraph 98(1)(b); or
  - (d) at the time of the disclosure, the protected information is already publicly available; or
  - (e) both:
    - (i) the disclosure is, or is a kind of disclosure that is, certified in writing by the Minister to be in the public interest; and
    - (ii) the disclosure is made in accordance with any requirements specified in the regulations; or
  - (f) both:
    - (i) the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of a person; and
    - (ii) the disclosure is for the purposes of preventing or lessening that threat; or
  - (g) both:
    - (i) the information disclosed is a summary of, or statistics derived from, protected information; and
    - (ii) the information is not likely to enable the identification of a person.
- (2) An instrument made under subparagraph (1)(e)(i) certifying that a particular disclosure is in the public interest is not a legislative instrument.
- (3) An instrument made under subparagraph (1)(e)(i) certifying that a kind of disclosure is in the public interest is a legislative instrument.

**100 Disclosing commercially sensitive information to courts and tribunals etc.**

- (1) This section applies if:
- (a) information or a document is disclosed to, or obtained by, a person (the *public official*) in the course of the person performing a function or duty, or exercising a power, under or in relation to this Act; and
  - (b) there is a risk that disclosure of the information or document might substantially prejudice the commercial interests of a person other than the public official.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

*Information not to be disclosed to court or tribunal*

- (2) The public official must not, except for the purposes of this Act, be required to disclose the information to, or produce the document in or to, a court, tribunal, authority or other person having power to require the production of documents or the answering of questions.

## **Part 9—Miscellaneous**

### **Division 1—Guide to this Part**

#### **101 Guide to this Part**

This Part deals miscellaneous matters, including the following:

- (a) making applications under this Act (including regulations and instruments made under it) and requesting additional information to determine them;
- (b) protecting the privilege against self-incrimination;
- (c) compensation for damage to electronic equipment, or acquisition of property;
- (d) annual reports and publishing material on the Department's website;
- (e) reviewing the operation of this Act;
- (f) delegations;
- (g) the power to make regulations.

## Division 2—Miscellaneous

### 102 General requirements for making applications

- (1) An application under this Act must be:
  - (a) made in the manner and form approved in writing by the Minister; and
  - (b) accompanied by:
    - (i) any documentation or other information specified in the approved form; and
    - (ii) any fee specified in the regulations.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

- (2) The approved form may require the documentation or information accompanying an application, or any statement made in an application, to be verified by statutory declaration.
- (3) To avoid doubt, the Minister may approve different forms, and the regulations may specify different fees, for different classes of application (including applications that relate to different classes of product).
- (4) The Minister may waive the whole or a part of a fee that is payable in relation to an application under this Act.

### 103 Applications—requesting additional information

- (1) For the purposes of determining an application under this Act, the Minister may give the applicant a written notice requesting the applicant to give the Minister further specified documentation or information before the day specified in the notice.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

- (2) The Minister may require the documentation or information to be verified by statutory declaration.

#### **104 Privilege against self-incrimination not affected**

Nothing in this Act affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

#### **105 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated under section 72 (inspection powers with consent) or 74 (inspection powers with warrant):
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a relevant court for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

- (5) In this Act, *damage*, in relation to data, includes damage by erasure of data or addition of other data.

### **106 Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a relevant court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this Act:

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

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

### **107 Annual report**

- (1) The Minister must prepare a report on the operation of this Act during each financial year.
- (2) The Minister must do so as soon as practicable after the end of the financial year.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is completed.
- (4) If sections 1 and 2 of this Act do not commence at the beginning of a financial year, this section has effect in relation to the period beginning at the commencement of those sections and ending on the next 30 June as if:
- (a) if the period is less than 6 months—the period were included in the next financial year; or
  - (b) in any other case—the period were a financial year.

### **108 Publishing material about arrangements**

- (1) The Minister must publish on the Department's website, for each accredited voluntary arrangement and each approved co-regulatory arrangement:
  - (a) a summary of the arrangement; and
  - (b) the name of the arrangement's administrator; and
  - (c) the contact details for the arrangement's administrator that are specified in the regulations; and
  - (d) a copy of any report on the operation of the arrangement given to the Minister:
    - (i) for an accredited voluntary arrangement—in accordance with a condition of the arrangement's accreditation (see paragraph 13(2)(f)); or
    - (ii) for an approved co-regulatory arrangement—as mentioned in subsection 24(4) (requirements for administrator of approved co-regulatory arrangement); and
  - (e) for an approved co-regulatory arrangement—a copy of any audit report in relation to the arrangement given to the Minister in accordance with a notice under section 30 (directed audits).
- (2) However, the Minister must not publish any information under subsection (1) if the Minister is satisfied that:
  - (a) there is a risk that publishing the information might substantially prejudice the commercial interests of a person; and
  - (b) publishing the information is not in the public interest.

### **108A Publishing material about products being considered for accreditation or regulation under this Act**

- (1) The Minister must publish on the Department's website, before the end of each financial year that starts after the commencement of this Act:
  - (a) a list of classes of products in relation to which the Minister is proposing to consider, during the next financial year,

- whether some form of accreditation or regulation under this Act might be appropriate; and
- (b) the reason (or reasons) why the Minister is proposing to give that consideration.
- (2) In preparing a list of classes of products as required by paragraph (1)(a), the Minister may have regard to any matter the Minister considers relevant, including:
- (a) whether the product stewardship criteria are satisfied in relation to those classes of products; and
- (b) whether one or more of the following apply in relation to the products in those classes:
- (i) reusing, recycling, recovering, treating or disposing of the products involves a significant cost to the Commonwealth, or State, Territory or local governments;
- (ii) the consumer is willing to pay for action that reduces the impact that the products have on the environment, or that substances contained in the products have on the environment, or on the health or safety of human beings;
- (iii) taking action to reduce those impacts will offer business opportunities that would make a contribution to the economy.
- (3) The Minister must cause to be tabled in both Houses of Parliament a list of classes of products published under paragraph (1)(a), accompanied by the reason (or reasons) in relation to that list published under paragraph (1)(b), within 15 sitting days after the day of that publication.

### **108B Product Stewardship Advisory Group**

#### *Establishment*

- (1) The Product Stewardship Advisory Group is established by this subsection.

*Function*

- (2) The Advisory Group's function is to provide advice to the Minister:
  - (a) at the Advisory Group's own initiative—in relation to the performance of the Minister's function under subsection 108A(1) (products being considered for accreditation or regulation); and
  - (b) when requested to do so by the Minister—in relation to the performance of the Minister's functions under this Act.

*Further provisions about the Advisory Group*

- (3) Schedule 1 contains further provisions about the Advisory Group.

### **109 Review of operation of this Act**

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after:
  - (a) the fifth anniversary of the commencement of this section; and
  - (b) each fifth anniversary after the day mentioned in paragraph (a).
- (2) The persons who undertake the review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

### **110 Delegation**

- (1) The Minister may, by written instrument, delegate to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee or acting SES employee;all or any of the powers or functions conferred on the Minister under this Act.

Note: The expression *this Act* has an extended meaning (see the Dictionary in section 6).

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

### **111 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **Schedule 1—Product Stewardship Advisory Group**

Note: See subsection 108B(3).

### **1 Membership of Advisory Group**

- (1) The Advisory Group consists of the following members:
  - (a) at least 5, and no more than 9, members appointed under clause 2;
  - (b) a Chair appointed under clause 3.
- (2) The performance of the functions of the Advisory Group is not affected by reason only of the number of Advisory Group members falling below 6 for a period of not more than 6 months.

### **2 Appointment of members of Advisory Group (other than the Chair)**

- (1) An Advisory Group member (other than the Chair) is to be appointed by the Minister, by written instrument, on a part-time basis.

Note: The Chair of the Advisory Group is appointed under clause 3.
- (2) A person must not be appointed under this clause unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
- (3) Before appointing a person under this clause, the Minister must consult with:
  - (a) one or more groups from among each of the following:
    - (i) groups with technical and scientific expertise;
    - (ii) industry and business groups;
    - (iii) environmental groups;
    - (iv) consumer groups;
    - (v) groups representing local government interests; and

Clause 3

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(b) State and Territory governments.

- (4) An Advisory Group member appointed under this clause holds office for the period specified in his or her instrument of appointment. The period must not exceed 3 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

### 3 Appointment of Chair of Advisory Group

- (1) The Minister must appoint a person (other than an Advisory Group member appointed under clause 2) as the Chair of the Advisory Group, by written instrument, on a part-time basis.
- (2) A person must not be appointed as the Chair of the Advisory Group unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.
- (3) The Minister may, by written instrument, appoint an Advisory Group member to act as the Chair:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Example: The Chair would be unable to perform the duties of the office if required not to be present during a deliberation by the Advisory Group, and not to take part in any decision of the Advisory Group, under subclause 8(4) or (5) (disclosure of interests to Advisory Group).

- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

#### **4 Remuneration**

- (1) An Advisory Group member is to be paid the remuneration and allowances (if any) that are prescribed by the regulations.
- (2) The office of an Advisory Group member is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

#### **5 Leave of absence**

- (1) The Chair of the Advisory Group may grant leave of absence to another Advisory Group member on the terms and conditions that the Chair determines.
- (2) The Minister may grant leave of absence to the Chair of the Advisory Group on the terms and conditions that the Minister determines.

#### **6 Procedures of Advisory Group**

- (1) The Advisory Group may determine the way in which it is to perform its function (including when and where it meets and procedures to be followed in relation to its meetings).
- (2) However, subclause (1) applies subject to any written directions given to the Advisory Group by the Minister for the purposes of this subsection.
- (3) The Minister must not give directions under subclause (2) about the content of any advice that may be given to the Minister by the Advisory Group.
- (4) A direction given under subclause (2) is not a legislative instrument.

#### **7 Disclosure of interests to the Minister**

An Advisory Group member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

## **8 Disclosure of interests to the Advisory Group**

- (1) An Advisory Group member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Group must disclose the nature of the interest to a meeting of the Advisory Group.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Advisory Group.
- (4) Unless the Advisory Group otherwise determines, the Advisory Group member:
  - (a) must not be present during any deliberation by the Advisory Group on the matter; and
  - (b) must not take part in any decision of the Advisory Group with respect to the matter.
- (5) For the purposes of making a determination under subclause (4), the Advisory Group member:
  - (a) must not be present during any deliberation of the Advisory Group for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subclause (4) must be recorded in the minutes of the meeting of the Advisory Group.

## **9 Resignation**

- (1) An Advisory Group member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**10 Termination of appointment**

The Minister may terminate the appointment of an Advisory Group member:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the member:
  - (i) becomes bankrupt; or
  - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with his or her creditors; or
  - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the member is absent, except on leave of absence, from 3 consecutive meetings of the Advisory Group; or
- (d) if the member fails, without reasonable excuse, to comply with clause 7 (disclosure of interests to the Minister) or 8 (disclosure of interests to the Advisory Group).

**11 Other terms and conditions**

An Advisory Group member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

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*[Minister's second reading speech made in—  
Senate on 23 March 2011  
House of Representatives on 22 June 2011]*

(49/11)

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**Schedule 1** Product Stewardship Advisory Group

Clause 11

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