



Illegal Logging Prohibition Act 2012

No. 166, 2012

An Act to combat illegal logging, and for related purposes

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

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Illegal Logging Prohibition Act 2012

No. 166, 2012

An Act to combat illegal logging, and for related purposes

[Assented to 28 November 2012]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Illegal Logging Prohibition Act 2012*.

Section 2

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.	28 November 2012
2. Sections 3 to 8	The day after this Act receives the Royal Assent.	29 November 2012
3. Section 9	The day after the end of the period of 2 years after the commencement of the provision(s) covered by table item 2.	30 November 2014
4. Sections 10 and 11	The day after this Act receives the Royal Assent.	29 November 2012
5. Sections 12 to 14	The day after the end of the period of 2 years after the commencement of the provision(s) covered by table item 2.	30 November 2014
6. Sections 15 and 16	The day after this Act receives the Royal Assent.	29 November 2012
7. Sections 17 and 18	The day after the end of the period of 2 years after the commencement of the provision(s) covered by table item 2.	30 November 2014
8. Sections 19 to 86	The day after this Act receives the Royal Assent.	29 November 2012
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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

3 Crown to be bound

- (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.

4 Act does not extend to external Territories

This Act does not extend to the external Territories.

5 Concurrent operation of State and Territory laws

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

6 Guide to this Act

This Act prohibits the importation of illegally logged timber and the processing of illegally logged raw logs.

This Act also requires importers of regulated timber products and processors of raw logs to conduct due diligence in order to reduce the risk that illegally logged timber is imported or processed.

Importers of regulated timber products must provide declarations, at the time of import, to the Customs Minister about the due diligence that they have undertaken.

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

7 Definitions

In this Act:

Section 7

Australia, when used in a geographical sense, does not include the external Territories.

civil penalty order has the meaning given by subsection 60(4).

civil penalty provision has the meaning given by section 59.

Commonwealth authority means the following:

- (a) a body corporate established for a public purpose by or under an Act;
- (b) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
 - (i) the Commonwealth;
 - (ii) a body covered by paragraph (a).

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

contravention of this Act means:

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

Customs Minister means the Minister administering the *Customs Act 1901*.

damage, in relation to data, includes damage by erasure of data or addition of other data.

due diligence requirements:

- (a) for importing regulated timber products—has the meaning given by subsection 14(1); and
- (b) for processing raw logs—has the meaning given by subsection 18(1).

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:

- (a) a thing with respect to which this Act has been contravened or is suspected, on reasonable grounds, to have been contravened; or
- (b) a thing that there are reasonable grounds for suspecting will afford evidence of a contravention of this Act; or
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening this Act.

illegally logged, in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.

import means import into Australia.

inspector means a person appointed under section 19.

investigation powers has the meaning given by sections 31, 32 and 34.

investigation warrant means a warrant issued under section 42 or 43.

issuing officer means:

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

monitoring powers has the meaning given by sections 23, 24 and 26.

monitoring warrant means a warrant issued under section 28.

occupier, of premises, includes the person apparently in charge of the premises.

person assisting an inspector:

- (a) in Division 2 of Part 3 (monitoring powers)—has the meaning given by subsection 27(1); and

Section 7

(b) in Division 3 of Part 3 (investigation powers)—has the meaning given by subsection 35(1).

premises includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

regulated timber product has the meaning given by subsection 9(3).

relevant court means the Federal Court of Australia.

Secretary means the Secretary of the Department.

this Act includes the regulations.

timber product means a thing that is, is made from, or includes, timber.

Part 2—Importing

Division 1—Importing illegally logged timber

8 Importing illegally logged timber

A person commits an offence if:

- (a) the person imports a thing; and
- (b) the thing is, is made from, or includes, illegally logged timber; and
- (c) the thing is not prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 5 years imprisonment or 500 penalty units, or both.

9 Importing illegally logged timber in regulated timber products

(1) A person commits an offence if:

- (a) the person imports a thing; and
- (b) the thing is, is made from, or includes, illegally logged timber; and
- (c) the thing is a regulated timber product; and
- (d) the thing is not prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 5 years imprisonment or 500 penalty units, or both.

(2) The fault element for paragraph (1)(b) is negligence.

(3) A **regulated timber product** is a timber product prescribed by the regulations.

10 Forfeiture

(1) A court may order all or any part of a thing to be forfeited to the Commonwealth if:

Part 2 Importing

Division 1 Importing illegally logged timber

Section 11

- (a) the court convicts a person of an offence against section 8 or 9 in respect of the thing or part; and
 - (b) the thing or part is the property of the person.
- (2) The person is entitled to be heard in relation to the order.
- (3) The thing or part may be dealt with or disposed of in any manner that the Secretary thinks appropriate, but only after:
- (a) if the periods provided for lodging appeals against the order and the conviction have ended without such an appeal having been lodged—the end of those periods; or
 - (b) if one or more such appeals have been lodged—the appeals lapse or are finally determined.

11 Application of the *Customs Act 1901*

If:

- (a) the importation of goods is an offence under section 8 or 9; and
- (b) the Secretary notifies the Chief Executive Officer of Customs in writing that the Secretary wishes the *Customs Act 1901* to apply to that importation;

the *Customs Act 1901* has effect as if the goods included in that importation were goods described as forfeited to the Crown under section 229 of that Act because they were prohibited imports within the meaning of that Act.

Division 2—Importers' due diligence

12 Importing regulated timber products

A person commits an offence if:

- (a) the person imports a thing; and
- (b) the thing is a regulated timber product; and
- (c) the person does not comply with the due diligence requirements for importing the product; and
- (d) the thing is not prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 300 penalty units.

13 Customs declaration

A person commits an offence if:

- (a) the person imports a thing; and
- (b) the thing is a regulated timber product; and
- (c) the person does not make a declaration to the Customs Minister, in the manner and form prescribed by the regulations, about the person's compliance with the due diligence requirements for importing the product; and
- (d) the thing is not prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 100 penalty units.

14 Due diligence requirements for importing regulated timber products

- (1) The regulations must prescribe *due diligence requirements* for importing regulated timber products.
- (2) The requirements must be prescribed only for the purposes of reducing the risk that imported regulated timber products are, are made from, or include, illegally logged timber.

Part 2 Importing

Division 2 Importers' due diligence

Section 14

- (3) The requirements may include requirements in relation to one or more of the following:
- (a) gathering information for the purposes of assessing that risk, including in relation to the following:
 - (i) the kind, origin and details of harvest of timber;
 - (ii) the name and business addresses of, and other details about, suppliers of timber or timber products;
 - (iii) evidence of compliance with the laws of the country in which timber was harvested;
 - (iv) the completeness, accuracy or reliability of information gathered;
 - (b) assessing and identifying that risk;
 - (c) depending on the level of risk, measures to mitigate that risk;
 - (d) making declarations to the Customs Minister under section 13;
 - (e) providing statements of compliance;
 - (f) auditing;
 - (g) taking remedial action in prescribed circumstances;
 - (h) providing reports and other information to the Minister;
 - (i) publishing information.
- (4) Subsection (3) does not limit subsection (2).
- (5) The regulations may provide for due diligence requirements for importing regulated timber products to be satisfied, wholly or partly, by compliance with specified laws, rules or processes, including the following:
- (a) laws, or processes under laws, in force in a State or Territory or another country;
 - (b) rules or processes established or accredited by an industry or certifying body;
 - (c) established operational processes.
- (6) Paragraphs (5)(a) to (c) do not limit subsection (5).

Part 3—Processing

Division 1—Processing illegally logged raw logs

15 Processing illegally logged raw logs

- (1) A person commits an offence if:
- (a) the person processes a raw log into something other than a raw log; and
 - (b) the person is a constitutional corporation, or the person processes the raw log:
 - (i) in the course of, or for the purposes of, trade and commerce with other countries, or among the States or between a State and a Territory; or
 - (ii) in a Territory; or
 - (iii) on behalf of a constitutional corporation; or
 - (iv) for the purposes of supplying timber products to a constitutional corporation; or
 - (v) on behalf of the Commonwealth or a Commonwealth authority; or
 - (vi) for the purposes of supplying timber products to the Commonwealth or a Commonwealth authority; and
 - (c) the raw log is illegally logged; and
 - (d) the person is not included in a class of persons prescribed as exempt by the regulations for the purposes of this paragraph; and
 - (e) the process is not prescribed as exempt by the regulations for the purposes of this paragraph; and
 - (f) the raw log is not of a kind prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 5 years imprisonment or 500 penalty units, or both.

Part 3 Processing

Division 1 Processing illegally logged raw logs

Section 16

Exception—imported raw logs

- (2) Subsection (1) does not apply if the raw log was imported into Australia.

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

16 Forfeiture

- (1) A court may order all or any part of a thing to be forfeited to the Commonwealth if:
- (a) the court convicts a person of an offence against section 15 in respect of the thing or part; and
 - (b) the thing or part is the property of the person.
- (2) The person is entitled to be heard in relation to the order.
- (3) The thing or part may be dealt with or disposed of in any manner that the Secretary thinks appropriate, but only after:
- (a) if the periods provided for lodging appeals against the order and the conviction have ended without such an appeal having been lodged—the end of those periods; or
 - (b) if one or more such appeals have been lodged—the appeals lapse or are finally determined.

Division 2—Processors' due diligence

17 Processing raw logs

- (1) A person commits an offence if:
- (a) the person processes a raw log into something other than a raw log; and
 - (b) the person is a constitutional corporation, or the person processes the raw log:
 - (i) in the course of, or for the purposes of, trade and commerce with other countries, or among the States or between a State and a Territory; or
 - (ii) in a Territory; or
 - (iii) on behalf of a constitutional corporation; or
 - (iv) for the purposes of supplying timber products to a constitutional corporation; or
 - (v) on behalf of the Commonwealth or a Commonwealth authority; or
 - (vi) for the purposes of supplying timber products to the Commonwealth or a Commonwealth authority; and
 - (c) the person does not comply with the due diligence requirements for processing the raw logs; and
 - (d) the raw log is not of a kind prescribed as exempt by the regulations for the purposes of this paragraph.

Penalty: 300 penalty units.

Exception—imported raw logs

- (2) Subsection (1) does not apply if the raw log was imported into Australia.

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

18 Due diligence requirements for processing raw logs

- (1) The regulations must prescribe *due diligence requirements* for processing raw logs.
- (2) The requirements must be prescribed only for the purposes of reducing the risk that illegally logged raw logs are processed.
- (3) The requirements may include requirements in relation to one or more of the following:
 - (a) gathering information for the purposes of assessing that risk, including in relation to the following:
 - (i) the kind, origin and details of harvest of raw logs;
 - (ii) the name and business addresses of, and other details about, suppliers of raw logs;
 - (iii) evidence of compliance with the laws of the State or Territory in which raw logs were harvested;
 - (iv) the completeness, accuracy or reliability of information gathered;
 - (b) assessing and identifying that risk;
 - (c) depending on the level of risk, measures to mitigate that risk;
 - (d) providing statements of compliance;
 - (e) auditing;
 - (f) taking remedial action in prescribed circumstances;
 - (g) providing reports and other information to the Minister;
 - (h) publishing information.
- (4) Subsection (3) does not limit subsection (2).
- (5) The regulations may provide for due diligence requirements for processing raw logs to be satisfied, wholly or partly, by compliance with specified laws, rules or processes, including the following:
 - (a) laws, or processes under laws, in force in a State or Territory;
 - (b) rules or processes established or accredited by an industry or certifying body;
 - (c) established operational processes.
- (6) Paragraphs (5)(a) to (c) do not limit subsection (5).

Part 4—Monitoring, investigation and enforcement

Division 1—Inspectors

19 Appointment of inspectors

- (1) The Secretary may, in writing, appoint a person as an inspector for the purposes of this Act.
- (2) The Secretary must not appoint a person as an inspector unless the Secretary is satisfied that the person has suitable training or experience to properly exercise the powers of an inspector.
- (3) An inspector holds office for the period specified in the instrument of appointment. The period must not exceed 2 years.
- (4) An inspector must, in exercising powers as such, comply with any directions of the Secretary.
- (5) If a direction is given under subsection (4) in writing, the direction is not a legislative instrument.

20 Identity cards

- (1) The Secretary must issue an identity card to an inspector.

Form of identity card

- (2) The identity card must:
 - (a) be in the form prescribed by the regulations; and
 - (b) contain a recent photograph of the inspector.

Offence

- (3) 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

Part 4 Monitoring, investigation and enforcement

Division 1 Inspectors

Section 20

(c) the person does not return the identity card to the Secretary within 14 days after ceasing to be an inspector.

Penalty: 1 penalty unit.

(4) An offence against subsection (3) is an offence of strict liability.

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

Defence: card lost or destroyed

(5) Subsection (3) 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*.

Inspector must carry card

(6) An inspector must carry his or her identity card at all times when exercising powers as an inspector.

Division 2—Monitoring

Subdivision A—Overview

21 Simplified outline

The following is a simplified outline of this Division:

This Division allows an inspector to monitor whether the provisions of this Act have been, or are being, complied with.

It also allows an inspector to monitor whether information given in compliance, or purported compliance, with a provision of this Act is correct.

An inspector may enter premises for the purpose of monitoring.

Entry must be with the consent of the occupier of the premises or under a monitoring warrant.

An inspector who enters premises may exercise monitoring powers.

An inspector who enters premises may be assisted by other persons if that assistance is necessary and reasonable.

Subdivision B—Monitoring powers

22 Inspector may enter premises by consent or under a warrant

- (1) An inspector may enter any premises and exercise the monitoring powers for either or both of the following purposes:
 - (a) determining whether this Act has been, or is being, complied with;
 - (b) determining whether information given in compliance, or purported compliance, with this Act is correct.

Note: The *monitoring powers* are set out in sections 23, 24 and 26.

Section 23

- (2) However, an inspector is not authorised to enter the premises unless:
- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 49.

23 Monitoring powers of inspectors

The following are the *monitoring powers* that an inspector may exercise in relation to premises under section 22:

- (a) the power to search the premises and any thing on the premises;
- (b) the power to examine or observe any activity conducted on the premises;
- (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
- (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (h) the power to sample any thing on the premises;
- (i) the powers set out in subsections 24(1) and (3) and 26(2).

24 Operating electronic equipment

- (1) The *monitoring powers* include the power to operate electronic equipment on the premises if the inspector has reasonable grounds to suspect that any of the following contains relevant data:
- (a) the equipment;
 - (b) a disk, tape or other storage device that:

- (i) is on the premises; and
- (ii) can be used with the equipment or is associated with it.

Note: For compensation for damage to electronic equipment, see section 58.

- (2) **Relevant data** means information that is relevant to determining whether:
- (a) this Act has been, or is being, complied with; or
 - (b) information given in compliance, or purported compliance, with this Act is correct.
- (3) The **monitoring powers** include the following powers in relation to relevant data found in the exercise of the power under subsection (1):
- (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
 - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An inspector may operate electronic equipment as mentioned in subsection (1) or (3) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

25 Expert assistance to operate electronic equipment

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

Section 25

Securing equipment

- (2) An inspector may do whatever is necessary to secure any electronic equipment that is on the premises if the inspector believes on reasonable grounds that:
- (a) there is relevant data on the premises; and
 - (b) the relevant data may be accessible by operating the equipment; and
 - (c) expert assistance is required to operate the equipment; and
 - (d) the relevant data may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection.

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

- (3) **Relevant data** means information relevant to determining whether:
- (a) this Act has been, or is being, complied with; or
 - (b) information given in compliance, or purported compliance, with this Act is correct.
- (4) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
- (a) the inspector's intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

- (5) The equipment may be secured until the earlier of the following happens:
- (a) the 24-hour period ends;
 - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 58.

Extensions

- (6) The inspector may apply to an issuing officer for an extension of the 24-hour period if the inspector believes on reasonable grounds that the equipment needs to be secured for longer than that period.

- (7) Before making the application, the inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (8) The provisions of this Division relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24-hour period may be extended more than once.

26 Securing evidential material

- (1) This section applies if an inspector enters premises under a monitoring warrant for either or both of the following purposes:
 - (a) determining whether this Act has been, or is being, complied with;
 - (b) determining whether information given in compliance, or purported compliance, with this Act is correct.
- (2) The *monitoring powers* include the power to secure a thing for a period not exceeding 24 hours if:
 - (a) the thing is found during the exercise of monitoring powers on the premises; and
 - (b) an inspector believes on reasonable grounds that:
 - (i) the thing affords evidence of a contravention of this Act; and
 - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
 - (iii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.
- (3) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, the inspector may apply to an issuing officer for an extension of that period.
- (4) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or

Section 27

her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

- (5) The provisions of this Division relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (6) The 24-hour period may be extended more than once.

Subdivision C—Persons assisting inspectors

27 Persons assisting inspectors

Inspectors may be assisted by other persons

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

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
 - (a) may enter the premises; and
 - (b) may exercise powers and perform functions and duties under this Division and Division 4 for the purposes of assisting the inspector to determine whether:
 - (i) this Act has been, or is being, complied with; or
 - (ii) information given in compliance, or purported compliance, with this Act is correct; and
 - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.

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

Subdivision D—Monitoring warrants

28 Monitoring warrants

Application for warrant

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

Issue of warrant

- (2) The issuing officer may issue the warrant if the issuing officer 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 the purpose of determining whether:
- (a) this Act has been, or is being, complied with; or
 - (b) information given in compliance, or purported compliance, with this Act is correct.
- (3) However, the issuing officer must not issue the warrant unless the inspector or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
- (a) describe the premises to which the warrant relates; and
 - (b) state that the warrant is issued under this section; and
 - (c) state the purpose for which the warrant is issued; and
 - (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in this Division and Division 4 in relation to the premises; and

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- (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

Division 3—Investigation

Subdivision A—Overview

29 Simplified outline

The following is a simplified outline of this Division:

This Division allows an inspector to gather material that relates to the contravention of this Act.

An inspector may enter premises if there are reasonable grounds for suspecting that there may be material on the premises that relates to a contravention of this Act.

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

An inspector who enters premises may exercise investigation powers.

An inspector who enters premises may be assisted by other persons if that assistance is necessary and reasonable.

Subdivision B—Investigation powers

30 Inspector may enter premises by consent or under a warrant

- (1) If an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
 - (a) enter the premises; and
 - (b) exercise the investigation powers.

Note: The *investigation powers* are set out in sections 31, 32 and 34.

- (2) However, an inspector is not authorised to enter the premises unless:

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- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
- (b) the entry is made under an investigation warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 49.

31 Investigation powers of inspectors

The following are the *investigation powers* that an inspector may exercise in relation to premises under section 30:

- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;
- (b) if entry to the premises is under an investigation warrant:
 - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
 - (ii) the power to seize evidential material of that kind if the inspector finds it on the premises;
- (c) the power to inspect, examine, take measurements of or conduct tests on evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (f) the power to sample any thing on the premises;
- (g) the powers set out in subsections 32(1) and (2) and section 34.

32 Operating electronic equipment

- (1) The *investigation powers* include the power to operate electronic equipment on the premises if the inspector has reasonable grounds
-

for suspecting that any of the following contains evidential material referred to in paragraph 31(a) or (b):

- (a) the equipment;
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it.
- (2) The *investigation powers* include the following powers in relation to evidential material described in subsection (1) found in the exercise of the power under that subsection:
- (a) if entry to the premises is under an investigation warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
 - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
 - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (3) An inspector may operate electronic equipment as mentioned in subsection (1) or (2) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- Note: For compensation for damage to electronic equipment, see section 58.
- (4) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or

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- (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

33 Expert assistance to operate electronic equipment

- (1) This section applies if an inspector enters premises under an investigation warrant to search for evidential material.

Securing equipment

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

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

- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
 - (a) the inspector's intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

- (4) The equipment may be secured until the earlier of the following happens:
 - (a) the 24-hour period ends;
 - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 58.

Extensions

- (5) The inspector may apply to an issuing officer for an extension of the 24-hour period, if the inspector believes on reasonable grounds that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the inspector's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Division relating to the issue of investigation warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24-hour period may be extended more than once.

34 Seizing other evidential material

- (1) This section applies if an inspector enters premises under an investigation warrant to search for evidential material.
- (2) The *investigation powers* include seizing a thing that is not evidential material of the kind specified in the warrant if:
 - (a) in the course of searching for the kind of evidential material specified in the warrant, the inspector finds the thing; and
 - (b) the inspector believes on reasonable grounds that the thing is evidence of a contravention of this Act; and
 - (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction.

Subdivision C—Persons assisting inspectors

35 Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) An inspector may be assisted by other persons in exercising powers or performing functions or duties under this Division and

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Division 4, if that assistance is necessary and reasonable. A person giving such assistance is a *person assisting* the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
 - (a) may enter the premises; and
 - (b) may exercise powers and perform functions and duties under this Division and Division 4 in relation to evidential material; and
 - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

Subdivision D—Matters relating to seizure

36 Copies of seized things to be provided

- (1) This section applies if:
 - (a) an investigation warrant is being executed in relation to premises; and
 - (b) an inspector seizes one or more of the following from the premises under this Division:
 - (i) a document, film, computer file or other thing that can be readily copied;
 - (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the warrant is

executed, may request the inspector to give a copy of the thing or the information to the occupier or other person.

- (3) The inspector must comply with the request as soon as practicable after the seizure.
- (4) However, the inspector is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

37 Receipts for seized things

- (1) The inspector must provide a receipt for a thing that is seized under this Division.
- (2) One receipt may cover 2 or more things seized.

38 Return of seized things

- (1) The Secretary must take reasonable steps to return a thing seized under this Division when the earliest of the following happens:
 - (a) the reason for the thing's seizure no longer exists;
 - (b) it is decided that the thing is not to be used in evidence;
 - (c) the period of 60 days after the thing's seizure ends.

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

Exceptions

- (2) Subsection (1):
 - (a) is subject to any contrary order of a court; and
 - (b) does not apply if the thing:
 - (i) is forfeited or forfeitable to the Commonwealth; or
 - (ii) is the subject of a dispute as to ownership.
- (3) The Secretary is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
 - (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and

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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 39; or
- (c) the Commonwealth or the Secretary is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

Return of thing

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

39 Issuing officer may permit a thing to be retained

- (1) The Secretary may apply to an issuing officer for an order permitting the retention of a thing seized under this Division for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
 - (a) 60 days after the seizure; or
 - (b) a period previously specified in an order of an issuing officer under this section.
- (2) Before making the application, the Secretary must:
 - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
 - (b) if it is practicable to do so, notify each person whom the Secretary believes to have such an interest of the proposed application.

Order to retain thing

- (3) The issuing officer may order that the thing may continue to be retained for a period specified in the order if the issuing officer is satisfied that it is necessary for the thing to continue to be retained:
 - (a) for the purposes of an investigation as to whether this Act has been contravened; or

- (b) to enable evidence of a contravention of this Act to be secured for the purposes of a prosecution or an action to obtain a civil penalty order.
- (4) The period specified must not exceed 3 years.

40 Disposal of things

- (1) The Secretary may dispose of a thing seized under this Division if:
 - (a) the Secretary has taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the Secretary has been unable to locate the person; or
 - (ii) the person has refused to take possession of the thing.
- (2) The Secretary may dispose of the thing in such manner as the Secretary thinks appropriate.

41 Compensation for acquisition of property

- (1) If the operation of section 40 would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or another court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

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

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

Subdivision E—Investigation warrants

42 Investigation warrants

Application for warrant

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

Issue of warrant

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

Content of warrant

- (4) The warrant must:
 - (a) state the contravention or contraventions to which the warrant relates; and
 - (b) describe the premises to which the warrant relates; and
 - (c) state that the warrant is issued under this Subdivision; and
 - (d) specify the kinds of evidential material that are to be searched for under the warrant; and
 - (e) state that the evidential material specified may be seized under the warrant; and
 - (f) state that any evidential material found in the course of executing the warrant that the person executing the warrant believes on reasonable grounds it is necessary to seize in order to prevent its concealment, loss or destruction, may be seized under the warrant; and
 - (g) name one or more inspectors; and
 - (h) authorise the inspectors named in the warrant:

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

43 Investigation warrants by telephone, fax etc.

Application for warrant

- (1) An inspector may apply to an issuing officer by telephone, fax or other electronic means for a warrant under section 42 in relation to premises:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the warrant, the inspector must prepare an information of the kind mentioned in subsection 42(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Issuing officer may complete and sign warrant

- (4) The issuing officer may complete and sign the same warrant that would have been issued under section 42 if the issuing officer is satisfied that there are reasonable grounds for doing so:
 - (a) after considering the terms of the information; and
 - (b) after receiving such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

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

Obligations on inspector

- (6) The inspector must then do the following:
- (a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
 - (b) state on the form the following:
 - (i) the name of the issuing officer;
 - (ii) the day on which, and the time at which, the warrant was signed;
 - (c) send the following to the issuing officer:
 - (i) the form of warrant completed by the inspector;
 - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (7) The inspector must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day on which the warrant ceases to be in force;
 - (b) the day on which the warrant is executed.

Issuing officer to attach documents together

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

44 Authority of warrant

- (1) A form of warrant duly completed under subsection 43(6) is authority for the same powers as are authorised by the warrant signed by the issuing officer under subsection 43(4).

- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 43 if:
- (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
 - (b) the warrant signed by the issuing officer authorising the exercise of the power is not produced in evidence.

45 Offence relating to warrants by telephone, fax etc.

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 43 the name of an issuing officer unless that issuing officer signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows departs in a material particular from the terms of a warrant signed by an issuing officer under that section; or
- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or
- (e) give to an issuing officer a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

46 Completing execution of an investigation warrant after temporary cessation

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

Application for extension in emergency situation

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

Extension in emergency situation

- (5) An issuing officer may extend the period during which the inspector and persons assisting may be away from the premises if:
 - (a) an application is made under subsection (3); and

- (b) the issuing officer is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
- (c) the extension would not result in the period ending after the warrant ceases to be in force.

47 Completing execution of an investigation warrant stopped by court order

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

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

Division 4—General provisions relating to monitoring and investigation

Subdivision A—Overview

48 Simplified outline

The following is a simplified outline of this Division:

An occupier's consent to an inspector entering premises for the purposes of monitoring must be voluntary. Inspectors must abide by the terms of that consent.

An inspector who enters premises under a warrant must give details of the warrant to the occupier of the premises.

The occupier of the premises may observe the execution of a monitoring or an investigation warrant and must provide reasonable facilities and assistance for the effective execution of the warrant.

Subdivision B—Obligations of inspectors in entering premises

49 Consent

- (1) Before obtaining the consent of an occupier to enter premises for the purposes of paragraph 22(2)(a) or 30(2)(a), an inspector must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

50 Announcement before entry under warrant

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

51 Inspector to be in possession of warrant

- (1) An inspector executing a monitoring warrant must be in possession of the warrant issued by the issuing officer under section 28, or a copy of the warrant as so issued.

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- (2) An inspector executing an investigation warrant must be in possession of:
- (a) the warrant issued by the issuing officer under section 42, or a copy of the warrant as so issued; or
 - (b) the form of warrant completed under subsection 43(6), or a copy of the form as so completed.

52 Details of warrant etc. to be given to occupier

- (1) An inspector must comply with subsection (2) if:
- (a) a monitoring warrant or an investigation warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The inspector executing the warrant must, as soon as practicable:
- (a) do one of the following:
 - (i) if the warrant is a monitoring warrant issued under section 28—make a copy of the warrant available to the occupier or other person (which need not include the signature of the issuing officer who issued it);
 - (ii) if the warrant is an investigation warrant issued under section 42—make a copy of the warrant available to the occupier or other person (which need not include the signature of the issuing officer who issued it);
 - (iii) if the warrant is an investigation warrant signed under section 43—make a copy of the form of warrant completed under subsection 43(6) available to the occupier or other person; and
 - (b) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Subdivision D.

Subdivision C—Additional powers of inspectors

53 Use of force in executing a warrant

In executing a monitoring warrant or an investigation warrant:

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

54 Inspector may ask questions and seek production of documents

Application

- (1) This section applies if:
 - (a) an inspector enters premises for the purposes of determining whether:
 - (i) this Act has been, or is being, complied with; or
 - (ii) information given in compliance, or purported compliance, with this Act is correct; or
 - (b) an inspector enters premises to search for evidential material.

Entry with consent

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to:
 - (a) compliance with this Act; or
 - (b) information given in compliance, or purported compliance, with this Act; or
 - (c) evidential material.

Entry under a warrant

- (3) If the entry is authorised by a monitoring or an investigation warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to:
 - (a) in the case of a monitoring warrant:
 - (i) compliance with this Act; or
 - (ii) information given in compliance, or purported compliance, with this Act; or
 - (b) in the case of an investigation warrant—evidential material of the kind specified in the warrant.

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Offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

Subdivision D—Occupier’s rights and responsibilities on entry

55 Occupier entitled to observe execution of warrant

- (1) The occupier of premises to which a monitoring warrant or an investigation warrant relates, or other person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person 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.

56 Occupier to provide inspector with facilities and assistance

- (1) The occupier of premises to which a monitoring warrant or an investigation warrant relates, or another person who apparently represents the occupier, 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 E—Other provisions

57 Powers of issuing officers

Powers conferred personally

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

Powers need not be accepted

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

Protection and immunity

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

58 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in Division 2 or 3:
 - (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.

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- (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 the Federal Court of Australia or another court of competent jurisdiction 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.

Division 5—Civil penalty provisions

Subdivision A—Overview

59 Simplified outline

The following is a simplified outline of this Division:

This Division deals with the use of civil penalties to enforce civil penalty provisions. A ***civil penalty provision*** is a provision of the regulations that is declared by the regulations to be a civil penalty provision.

Civil penalty orders may be sought from a court in relation to contraventions of civil penalty provisions.

Subdivision B—Obtaining a civil penalty order

60 Civil penalty orders

Application for order

- (1) The Secretary may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Secretary must make the application within 4 years of the alleged contravention.

Court may order person to pay pecuniary penalty

- (3) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

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

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

Determining pecuniary penalty

- (5) The pecuniary penalty must not be more than:
- (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
 - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
- (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered because 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 to have engaged in any similar conduct.

61 Civil enforcement of penalty

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a 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 judgement debt.

62 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.

63 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 72.

- (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.

64 Proceedings may be heard together

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

65 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.

66 Contravening a civil penalty provision is not an offence

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

Subdivision C—Civil proceedings and criminal proceedings

67 Civil proceedings after criminal proceedings

A relevant court may 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.

68 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 (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
 - (a) the civil proceedings are dismissed; and
 - (b) costs must not be awarded in relation to the civil proceedings.

69 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 that would constitute 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.

70 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 an alleged 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 alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

Subdivision D—Miscellaneous

71 Ancillary contravention of civil penalty provisions

- (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 effect a contravention of a civil penalty provision.

Note: Section 74 (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to subsection (1) of this section.

Civil penalty

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

72 Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
 - (a) within a particular period; or
 - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
 - (a) within a particular period; or
 - (b) before a particular time;

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commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

73 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
 - (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.

74 State of mind

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 71(1)), 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 section 73 (which is about mistake of fact).

Division 6—Infringement notices

75 Simplified outline

The following is a simplified outline of this Division:

This Division deals with the use of infringement notices in the enforcement of provisions.

A person can be given an infringement notice in relation to a contravention of this Act.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of this Act. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

76 When an infringement notice may be given

- (1) If an inspector has reasonable grounds to believe that a person has contravened this Act, the inspector may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a provision unless subsection (4) applies.
- (4) An inspector may give a person a single infringement notice relating to multiple contraventions of a single provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than one day; and

- (d) each contravention is constituted by the failure or refusal on one of those days.

Note: For continuing offences, see subsection 4K(2) of the *Crimes Act 1914*.
For continuing contraventions of civil penalty provisions, see section 72 of this Act.

- (5) If a single provision can constitute both a civil penalty provision and an offence provision, the infringement notice must relate to the provision as an offence provision.

77 Matters to be included in an infringement notice

- (1) An infringement notice must:
- (a) be identified by a unique number; and
 - (b) state the day on which it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and position of the person who gave the notice; and
 - (e) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for the contravention; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice; and
 - (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn):
 - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
 - (ii) if the provision is an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings

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- seeking a civil penalty order will not be brought, in relation to the alleged contravention; or
- (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
 - (i) state that payment of the amount is not an admission of guilt or liability; and
 - (j) state that the person may apply to the Secretary to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so:
 - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
 - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
 - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that if the notice is withdrawn:
 - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
 - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
 - (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (n) state that the person may make written representations to the Secretary seeking the withdrawal of the notice.
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- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must be equal to one-fifth of the maximum pecuniary penalty that a court could impose on the person for that contravention.

78 Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the Secretary for an extension of the period referred to in paragraph 77(1)(h).
- (2) If the application is made before the end of that period, the Secretary may, in writing, extend that period. The Secretary may do so before or after the end of that period.
- (3) If the Secretary extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 77(1)(h) is taken to be a reference to that period so extended.
- (4) If the Secretary does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 77(1)(h) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 77(1)(h);
 - (b) the day that is 7 days after the day the person was given notice of the Secretary's decision not to extend.
- (5) The Secretary may extend the period more than once under subsection (2).

79 Withdrawal of an infringement notice

Representations seeking withdrawal of notice

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

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Withdrawal of notice

- (2) The Secretary may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the *relevant infringement notice*), the Secretary:
 - (a) must take into account any written representations seeking the withdrawal that were given by the person to the Secretary; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision enforceable under this Division;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision enforceable under this Division if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (iv) any other matter the Secretary considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
 - (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that:
 - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
 - (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be

- prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
- (a) the Secretary withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.
- (6) Evidence or information that the person, or a representative of the person, gives to the Secretary in the course of making representations under this section is not admissible in evidence against the person or representative in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

80 Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 77(1)(h):
- (a) any liability of the person for the alleged contravention is discharged; and
 - (b) either:
 - (i) if the provision is an offence provision—the person may not be prosecuted in a court for the alleged contravention; or
 - (ii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention; and

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- (c) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
 - (d) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

81 Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision enforceable under this Division; or
- (b) affect the liability of a person for an alleged contravention of a provision enforceable under this Division if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision enforceable under this Division; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision enforceable under this Division.

82 Further provision by regulation

The regulations may make further provision in relation to infringement notices given in relation to contraventions of provisions to which this Division applies.

Part 5—Miscellaneous

83 Publishing reports

- (1) The Secretary may publish reports about the operation of this Act.
- (2) Subsection (1) does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

84 Review of operation of Act

- (1) The Minister must cause a review to be undertaken of the first 5 years of the operation of this Act.
- (2) The persons undertaking the review must give the Minister a written report of the review within 12 months after the end of the 5 year period.
- (3) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

85 Delegation by Secretary

- (1) The Secretary may, in writing, delegate the Secretary's powers and functions under this Act to an SES employee, or acting SES employee, in the Department.
- (2) A person exercising powers or functions under a delegation under subsection (1) must comply with any directions of the Secretary.

86 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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- (2) Without limiting subsection (1), the regulations may:
- (a) prescribe fees in respect of any matter under this Act; and
 - (b) prescribe penalties not exceeding 50 penalty units in respect of offences against the regulations; and
 - (c) declare that specified provisions of the regulations are civil penalty provisions, and prescribe penalties for contraventions of such provisions that do not exceed:
 - (i) for a body corporate—100 penalty units; or
 - (ii) in any other case—100 penalty units; and
 - (d) provide for review by the Administrative Appeals Tribunal of decisions made under this Act.

*[Minister's second reading speech made in—
House of Representatives on 23 November 2011
Senate on 22 August 2012]*