Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010

No. , 2010

(Sustainability, Environment, Water, Population and Communities)

A Bill for an Act to amend the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989, and for related purposes
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*Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*

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*i Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010 No. , 2010*
A Bill for an Act to amend the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, and for related purposes

The Parliament of Australia enacts:

1 **Short title**

This Act may be cited as the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment Act 2010*.

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

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<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>A single day 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.</td>
<td></td>
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<td>3. Schedule 2</td>
<td>At the same time as the provision(s) covered by table item 2.</td>
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1. Note: This table relates only to the provisions of this Act as originally enacted.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. (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. **Schedule(s)**

   Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—General amendments

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

1  At the end of section 6A (before the note)
Add “or the regulations”.

2  Subsection 7(1)
Insert:

civil penalty order means an order under subsection 65AC(1).

3  Subsection 7(1)
Insert:

civil penalty provision means:
(a) a provision of this Act declared by this Act to be a civil penalty provision; or
(b) a provision of the regulations declared by the regulations to be a civil penalty provision.

4  Subsection 7(1)
Insert:

designated court means:
(a) the Federal Court; or
(b) the Federal Magistrates Court; or
(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act or the regulations.

Note: For jurisdiction of State and Territory courts, see sections 69C and 69D.

5  Subsection 7(1)
Insert:

enforcement powers has the meaning given by section 53.

6  Subsection 7(1)
Insert:

**enforcement warrant** means:

(a) a warrant issued under section 55E; or

(b) a warrant signed by a magistrate under section 55F.

7 Subsection 7(1)

Insert:

**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.

8 Subsection 7(1)

Insert:

**evidential material**:

(a) in relation to an offence against this Act or the regulations—means:

(i) a thing with respect to which the offence has been committed or is suspected, on reasonable grounds, of having been committed; or

(ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of the offence; or

(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing the offence; or

(b) in relation to a contravention of a civil penalty provision—means:

(i) a thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or

(ii) a thing that there are reasonable grounds for suspecting will afford evidence as to the contravention of the civil penalty provision; or

(iii) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of contravening the civil penalty provision.
General amendments  Schedule 1

9 Subsection 7(1)
Insert:

    executive officer of a body corporate means:
    (a) a director of the body corporate; or
    (b) the chief executive officer (however described) of the body
corporate; or
    (c) the chief financial officer (however described) of the body
corporate; or
    (d) the secretary of the body corporate.

10 Subsection 7(1)
Insert:

    forfeitable goods has the meaning given by section 57.

11 Subsection 7(1)
Insert:

    forfeiture notice means a notice under subsection 60A(1).

12 Subsection 7(1)
Insert:

    monitoring powers has the meaning given by section 51A.

13 Subsection 7(1)
Insert:

    offence against this Act or the regulations includes an offence
against section 137.1 or 137.2 of the Criminal Code that relates to
this Act or the regulations.
Note: See also section 11.6 of the Criminal Code.

14 Subsection 7(1)
Insert:

    penalty unit has the meaning given by section 4AA of the Crimes
Act 1914.

15 Subsection 7(1)
Insert:

*Secretary* means the Secretary of the Department.

16 **At the end of subsection 8(1)**

Add “in writing”.

17 **Subsection 8(2)**

Repeal the subsection, substitute:

(2) A determination made under subsection (1) is a legislative instrument.

18 **At the end of section 13**

Add:

(9) Subsections (1), (1AA), (1AB), (1A), (2), (3), (4), (5), (6) and (6A) are civil penalty provisions.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

19 **Before paragraph 16(5)(a)**

Insert:

(aa) any civil penalty order made against the person for a contravention of a civil penalty provision, where the contravention occurred within the 10 years immediately preceding the making of the application; and

20 **After paragraph 16(5)(b)**

Insert:

(ba) if the person is a body corporate—any civil penalty order made against an executive officer of the body corporate for a contravention of a civil penalty provision, where the contravention occurred within the 10 years immediately preceding the making of the application; and

(bb) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against this Act or the regulations committed within the 10 years immediately preceding the making of the application; and
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(bc) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, where the offence was committed within the 10 years immediately preceding the making of the application; and

21 After paragraph 16(5)(c)

Insert:

(ca) if the person is a body corporate—whether an executive officer of the body corporate is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and

22 Paragraph 16(5)(d)

Omit “the application”, substitute “an application under this Act or the regulations”.

23 Paragraph 16(5)(e)

Omit “the application”, substitute “an application under this Act or the regulations”.

24 After paragraph 16(5)(e)

Insert:

(ea) if the person is a body corporate—any statement made by an executive officer of the body corporate in an application under this Act or the regulations that was false or misleading in a material particular; and

(eb) if:

(i) the person is a body corporate; and

(ii) a statement made by an executive officer of the body corporate in an application under this Act or the regulations was false or misleading in a material particular;

whether the executive officer knew that the statement was false or misleading; and

25 After paragraph 16(5)(f)
Insert:

(fa) if the person is a body corporate—whether an executive officer of the body corporate has contravened a condition of a licence; and

26 At the end of subsection 16(5)

Add:

; and (h) if the person is a body corporate—whether an executive officer of the body corporate held a licence that was cancelled under section 20.

27 After subsection 18(7B)

Insert:

(7C) A licensee must not contravene a condition of his or her licence.

(7D) Subsection (7C) is a civil penalty provision.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(7E) Subsection (7C) does not apply if the licensee has a reasonable excuse.

(7F) A person who wishes to rely on subsection (7E) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

28 At the end of section 19

Add:

(4) A pre-charged equipment licence stays in force:

(a) for a period of 2 years beginning at the start of the day the licence comes into force; or

(b) if a shorter period is specified in, or ascertained in accordance with, the licence—for that period;

unless it is cancelled, or stops being in force for any other reason, before then.

29 Before paragraph 20(2)(a)

Insert:

8 Ozone Protection and Synthetic Greenhouse Gas Management Amendment Bill 2010 No. , 2010
(aa) any civil penalty order made against the person for a contravention of a civil penalty provision, where the contravention occurred within the immediately preceding 10 years; and

30 At the end of paragraph 20(2)(a)
Add “and”.

31 At the end of paragraph 20(2)(b)
Add “and”.

32 After paragraph 20(2)(b)
Insert:

(ba) if the person is a body corporate—any civil penalty order made against an executive officer of the body corporate for a contravention of a civil penalty provision, where the contravention occurred within the immediately preceding 10 years; and

(bb) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against this Act or the regulations committed within the immediately preceding 10 years; and

(bc) if the person is a body corporate—any conviction of an executive officer of the body corporate for an offence against a law of the Commonwealth, of a State or of a Territory that is punishable by imprisonment for a period of 6 months or longer, where the offence was committed within the immediately preceding 10 years; and

33 At the end of paragraph 20(2)(c)
Add “and”.

34 After paragraph 20(2)(c)
Insert:

(ca) if the person is a body corporate—whether an executive officer of the body corporate is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with creditors or has made an assignment of remuneration for their benefit; and
Schedule 1 General amendments

35 Paragraph 20(2)(d)

After “this Act”, insert “or the regulations”.

36 At the end of subsection 20(2)

Add:
; and (f) if the person is a body corporate—any statement made by an executive officer of the body corporate in an application under this Act or the regulations that was false or misleading in a material particular; and

(g) if:

(i) the person is a body corporate; and
(ii) a statement made by an executive officer of the body corporate in an application under this Act or the regulations was false or misleading in a material particular;

whether the executive officer knew that the statement was false or misleading.

37 Section 25 (table item 9, column 3)

Omit “0.5”, substitute “0.24”.

38 At the end of section 26

Add:

(4) A notice under this section is not a legislative instrument.

39 Subsection 38(1) (penalty)

Omit “50 penalty units”, substitute “500 penalty units”.

40 Subsection 38(2) (penalty)

Omit “50 penalty units”, substitute “500 penalty units”.

41 After subsection 38(2A)

Insert:
(2B) A person to whom this Part applies must not manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

(2C) A person must not, in the course of engaging in an activity to which this Part applies, manufacture or import a product that contains scheduled substances, or uses scheduled substances in its operation, in contravention of a provision of Schedule 4.

(2D) Subsections (2B) and (2C) are civil penalty provisions.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

42 After subsection 41(2)

Insert:

(2A) The Minister may remove a country from the Register.

(2B) If a substance is listed in the Register in relation to a country, the Minister may remove the substance from the Register in relation to that country.

43 At the end of section 41

Add:

(6) The Register is not a legislative instrument.

44 Subsection 44(1) (penalty)

Omit “100 penalty units”, substitute “300 penalty units”.

45 After subsection 44(2)

Insert:

(2A) A person must not import from a non-Montreal Protocol country a product containing a stage-1 scheduled substance.

(2B) Subsection (2A) is a civil penalty provision.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).
46 **Subsection 44(3)**
Omit “Subsection (1) applies to a product declared by the Minister”, substitute “Subsections (1) and (2A) apply to a product declared, in writing, by the Minister”.

47 **Subsection 44(3)**
Omit “to which subsection (1) applies”, substitute “to which subsections (1) and (2A) apply”.

48 **Subsection 44(4)**
Omit “or the declaration of a product under subsection (3)”.

49 **Subsection 44(5) (penalty)**
Omit “100 penalty units”, substitute “300 penalty units”.

50 **After subsection 44(5A)**
Insert:

(5B) A person must not import from a non-Montreal Protocol country a product containing a stage-2 scheduled substance.

(5C) Subsection (5B) is a civil penalty provision.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

51 **Subsection 44(6)**
Omit “Subsection (5) applies to a product declared by the Minister”, substitute “Subsections (5) and (5B) apply to a product declared, in writing, by the Minister”.

52 **Subsection 44(6)**
Omit “to which subsection (5) applies”, substitute “to which subsections (5) and (5B) apply”.

53 **Subsection 44(7)**
Repeal the subsection, substitute:

(7) A declaration under subsection (3) or (6) is a legislative instrument.
54 Subsection 45(1) (penalty)
Omit “100 penalty units”, substitute “300 penalty units”.

55 After subsection 45(2)
Insert:

(2A) A person must not import from a non-Montreal Protocol country a product in the manufacture of which a stage-1 scheduled substance was used.

(2B) Subsection (2A) is a civil penalty provision.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

56 Subsection 45(3)
Omit “Subsection (1) applies to a product declared by the Minister”, substitute “Subsections (1) and (2A) apply to a product declared, in writing, by the Minister”.

57 Subsection 45(3)
Omit “to which subsection (1) applies”, substitute “to which subsections (1) and (2A) apply”.

58 Subsection 45(3A) (penalty)
Omit “100 penalty units”, substitute “300 penalty units”.

59 After subsection 45(3AA)
Insert:

(3AB) A person must not import from a non-Montreal Protocol country a product in the manufacture of which a stage-2 scheduled substance was used.

(3AC) Subsection (3AB) is a civil penalty provision.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

60 Subsection 45(3B)
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Omit “Subsection (3A) applies to a product declared by the Minister”, substitute “Subsections (3A) and (3AB) apply to a product declared, in writing, by the Minister”.

61 Subsection 45(3B)
Omit “to which subsection (3A) applies”, substitute “to which subsections (3A) and (3AB) apply”.

62 Subsection 45(4)
Omit “and (3A)”, substitute “, (2A), (3A) and (3AB)”.

63 Subsection 45(4)
Omit “determined by the Minister”, substitute “determined, in writing, by the Minister”.

64 Subsection 45(6)
Omit “, the declaration of a product under subsection (3) or (3B) or the determination of conditions under subsection (4)”.

65 Subsections 45(7) and (8)
Repeal the subsections, substitute:

(7) A declaration under subsection (3) or (3B) is a legislative instrument.

(8) A determination under subsection (4) is a legislative instrument.

(9) Despite the Legislative Instruments Act 2003, a determination under subsection (4) of this section takes effect at the start of the first day on which the determination is no longer liable to be disallowed, or to be taken to have been disallowed, under that Act.

66 Subsection 45B(1) (penalty)
Omit “100 penalty units”, substitute “300 penalty units”.

67 After subsection 45B(2)
Insert:

(2A) A person must not engage in conduct if:

(a) the conduct results in the discharge of a scheduled substance; and
(b) the discharge occurs in circumstances where it is likely that
the scheduled substance will enter the atmosphere; and
(c) the discharge is not in accordance with the regulations.

(2B) Subsection (2A) is a civil penalty provision.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches
of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

68 Subsection 45B(3)

Omit “Subsection (1) does not”, substitute “Subsections (1) and (2A) do
not”.

69 Subsection 45B(3) (note)

After “defendant”, insert “in criminal proceedings”.

70 After subsection 45B(3)

Insert:

(3A) A person who wishes to rely on subsection (3) of this section in
proceedings for a civil penalty order bears an evidential burden in
relation to that matter.

71 Subsection 46(1)

Omit “within 15 days”, substitute “before the 15th day”.

72 Subsection 46(1)

Omit “, in accordance with a form approved by the Minister,,”,
substitute “in accordance with the regulations”.

73 Subsections 46(1B), (1BA) and (1C)

Omit “within 15 days”, substitute “before the 15th day”.

74 Subsection 46(2) (penalty)

Omit “100 penalty units”, substitute “60 penalty units”.

75 Subsection 46(2AA) (penalty)

Omit “10 penalty units”, substitute “60 penalty units”.

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2010            15
16.26 After subsection 46(2B)

Insert:

(2C) A person must not contravene subsection (1).

(2D) A person must not contravene subsection (1B), (1BA) or (1C).

(2E) Subsections (2C) and (2D) are civil penalty provisions.

Note 1: Division 7 of Part VIII provides for pecuniary penalties for breaches of civil penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(4).

(2F) Subsections (2C) and (2D) do not apply if the person has a reasonable excuse.

(2G) A person who wishes to rely on subsection (2F) of this section in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

77 Division 1 of Part VIII (heading)

Repeal the heading, substitute:

Division 1—Powers of inspectors

78 Before section 48A

Insert:

Subdivision A—Inspectors

79 At the end of section 49

Add:

(3) The Minister must not appoint a person as an inspector unless the Minister is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.

80 After section 49

Insert:
49A Directions to inspectors

(1) An inspector must, in exercising powers as an inspector, comply with any directions of the Minister.

(2) If a direction is given under subsection (1) in writing, the direction is not a legislative instrument.

81 Before section 51

Insert:

Subdivision B—Monitoring powers

82 Subsection 51(1)

Omit all the words from and including “that the inspector has reasonable cause to believe” to and including “any such book, record or document.”, substitute “and exercise the monitoring powers set out in section 51A.”.

83 Subsection 51(3)

Omit “exercise any powers under subsection (1) in relation to premises”, substitute “enter premises under subsection (1) of this section, or exercise the monitoring powers set out in section 51A in relation to premises.”.

84 Subsection 51(4)

Repeal the subsection.

85 After section 51

Insert:

51A Monitoring powers of inspectors

General powers

(1) The following are the monitoring powers that an inspector may exercise in relation to premises under section 51:

(a) to search the premises and any thing on the premises;
Schedule 1 General amendments

(b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any gas or other substance on the premises;
(c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
(d) to inspect any book, record or document on the premises;
(e) to remove, take extracts from, or make copies of, any such book, record or document;
(f) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
(g) the powers set out in subsections (2), (3) and (5).

Operating electronic equipment

(2) The monitoring powers include the power to operate electronic equipment at premises to find out whether:
(a) the equipment; or
(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;
contains information that is relevant to ascertaining whether this Act or the regulations have been complied with.

(3) The monitoring powers include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
(a) to operate electronic equipment at the premises to put the information in documentary form and remove the documents so produced from the premises;
(b) to operate electronic equipment at the premises to transfer the information to a disk, tape or other storage device that:
   (i) is brought to the premises for the exercise of the power; or
   (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises or a person apparently representing the occupier;
and remove the disk, tape or other storage device from the premises.
(4) An inspector must not operate electronic equipment as mentioned in subsection (2) or (3) unless he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Securing things if entry to the premises is with the consent of the occupier etc.

(5) The monitoring powers include the power to secure a thing on the premises for not more than 24 hours if:
   (a) the thing is found on the premises during the exercise of monitoring powers under subsection (1); and
   (b) the occupier of the premises, or another person who apparently represents the occupier, consents to the inspector entering the premises; and
   (c) the inspector believes, on reasonable grounds, that:
      (i) the thing affords evidence as to the commission of an offence against this Act or the regulations, as to a contravention of a civil penalty provision, or as to both; 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.

(6) The inspector must not exercise the power under subsection (5) unless the inspector has given the occupier of the premises, or another person who apparently represents the occupier, a written notice that specifies the thing that the inspector intends to secure.

(7) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.

(8) 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 is entitled to be heard in relation to that application.

(9) The 24 hour period may be extended more than once.

Offence

(10) A person commits an offence if:
(a) an inspector has given the occupier of premises, or another
person who apparently represents the occupier of premises, a
notice under subsection (6); and
(b) the notice specifies a thing; and
(c) the person moves, alters or interferes with the thing specified
in the notice.

Penalty for contravention of this subsection: Imprisonment for 2
years.

51B Persons assisting inspectors—monitoring powers

Inspectors may be assisted by other persons

(1) An inspector may, in entering premises under section 51 and in
exercising the monitoring powers set out in the following
provisions in relation to the premises:
(a) paragraph 51A(1)(a);
(b) paragraph 51A(1)(b);
(c) paragraph 51A(1)(c);
(d) paragraph 51A(1)(f);
(e) subsection 51A(2);
(f) subsection 51A(3);
be assisted by other persons if that assistance is necessary and
reasonable.

(2) For the purposes of this section, a person giving such assistance is
a person assisting the inspector.

Powers of a person assisting the inspector

(3) A person assisting the inspector may:
(a) enter the premises; and
(b) exercise the monitoring powers set out in the following
provisions in relation to the premises:
(i) paragraph 51A(1)(a);
(ii) paragraph 51A(1)(b);
(iii) paragraph 51A(1)(c);
(iv) paragraph 51A(1)(f);
(v) subsection 51A(2);
(vi) subsection 51A(3);
but only in accordance with a direction given to the person by
the inspector.

(4) A power exercised by a person assisting the inspector as mentioned
in subsection (3) is taken for all purposes to have been exercised by
the inspector.

(5) If a direction is given under paragraph (3)(b) in writing, the
direction is not a legislative instrument.

86 Sections 52 and 53
Repeal the sections, substitute:

Subdivision C—Enforcement powers

52 Inspector may enter premises with consent or under enforcement
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 enforcement powers set out in section 53.

(2) However, an inspector is not authorised to enter the premises
unless:
(a) the occupier of the premises, or a person apparently
representing the occupier, has consented to the entry; or
(b) the entry is made under an enforcement warrant.
Note: For enforcement warrants, see sections 55E and 55F.

53 Enforcement powers of inspectors

General powers

(1) The following are the enforcement powers that an inspector may
exercise in relation to premises under section 52:
(a) to search the premises and any thing on the premises for the
evidential material;
(b) to inspect, examine, take measurements of, conduct tests on,
or take samples of the evidential material;
(c) to take photographs, make video or audio recordings or make sketches of the premises or the evidential material;
(d) to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
(e) the powers in subsections (2), (3), (4), (8) and (9).

**Power to seize**

(2) If the entry is under an enforcement warrant, the enforcement powers include the power to seize the evidential material if the inspector finds it on the premises.

Note: For enforcement warrants, see sections 55E and 55F.

**Operation of equipment**

(3) The enforcement powers include the power to operate electronic equipment at premises to find out whether:
   (a) the equipment; or
   (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;
contains evidential material.

**Removing documents and disks etc.**

(4) The enforcement powers include the following powers in relation to evidential material found in the exercise of the power under subsection (3):
   (a) to seize the equipment and any disk, tape or other associated device;
   (b) to operate electronic equipment at the premises to put the information in documentary form and seize the documents so produced;
   (c) to operate electronic equipment at the premises to transfer the information to a disk, tape or other storage device that:
       (i) is brought to the premises for the exercise of the power;
       or
       (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the
premises, or another person who apparently represents
the occupier;
and remove the disk, tape or other storage device from the
premises.

How powers to be exercised

(5) An inspector must not operate electronic equipment as mentioned
in subsection (3) or (4) unless he or she believes on reasonable
grounds that the operation of the equipment can be carried out
without damage to the equipment.

Seizing equipment

(6) An inspector must not seize equipment under paragraph (4)(a)
unless:
(a) it is not practicable to put the material in documentary form
as mentioned in paragraph (4)(b) or to transfer the material as
mentioned in paragraph (4)(c); or
(b) possession by the occupier of the equipment could constitute
an offence against a law of the Commonwealth.

(7) An inspector must not seize equipment under paragraph (4)(a) or
documents under paragraph (4)(b) unless the inspector entered the
premises under an enforcement warrant.

Seizing other evidential material

(8) If:
(a) in the course of searching for a particular thing, in
accordance with an enforcement warrant, an inspector finds
another thing that the inspector believes on reasonable
grounds to be evidential material; and
(b) the inspector believes, on reasonable grounds, that it is
necessary to seize the other thing in order to prevent its
concealment, loss or destruction, or its use:
(i) in committing, continuing or repeating an offence
against this Act or the regulations; or
(ii) in committing, continuing or repeating a contravention
of a civil penalty provision;
the enforcement powers include the power to seize that other thing.
Seizing containers

(9) If:

(a) an inspector has a power to seize a thing (the seizable thing) under subsection (2), (4) or (8); and

(b) the seizable thing is in a container; and

(c) the inspector believes, on reasonable grounds, that it is not reasonably practicable to seize the seizable thing without also seizing the container;

then, for the purposes of seizing the seizable thing, the enforcement powers include the power to seize the container containing the seizable thing (whether or not the container also contains any other thing).

(10) If the seizable thing is returned under section 53G or 60B, the container must be returned at the same time as the seizable thing.

(11) If the seizable thing is forfeited to the Commonwealth, the container must be returned as soon as reasonably practicable after the forfeiture.

Note: For forfeiture, see Division 3.

53A Persons assisting inspectors—enforcement powers

Inspectors may be assisted by other persons

(1) An inspector may, in entering premises under section 52 and in exercising the enforcement powers set out in the following provisions in relation to the premises:

(a) paragraph 53(1)(a);

(b) paragraph 53(1)(b);

(c) paragraph 53(1)(c);

(d) paragraph 53(1)(d);

(e) subsection 53(3);

(f) subsection 53(4);

be assisted by other persons if that assistance is necessary and reasonable.

(2) For the purposes of this section, a person giving such assistance is a person assisting the inspector.
Powers of a person assisting the inspector

(3) A person assisting the inspector may:
   (a) enter the premises; and
   (b) exercise the enforcement powers set out in the following provisions:
       (i) paragraph 53(1)(a);
       (ii) paragraph 53(1)(b);
       (iii) paragraph 53(1)(c);
       (iv) paragraph 53(1)(d);
       (v) subsection 53(3);
       (vi) subsection 53(4);
       in relation to the premises, but only in accordance with a direction given to the person by the inspector.

(4) A power exercised by a person assisting the inspector as mentioned in subsection (3) is taken for all purposes to have been exercised by the inspector.

(5) If a direction is given under paragraph (3)(b) in writing, the direction is not a legislative instrument.

53B Announcement before entry under warrant

(1) An inspector must, before entering premises under an enforcement warrant:
   (a) announce that he or she is authorised to enter the premises;
   and
   (b) show:
       (i) his or her identity card; or
       (ii) written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs;
       to the occupier of the premises, or another person apparently representing 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 he or she believes on reasonable grounds that immediate entry to the premises is required:
(a) to prevent serious damage to the environment; or
(b) to ensure that the effective execution of the warrant is not frustrated.

(3) If:
(a) an inspector is not required to comply with subsection (1) because of subsection (2); and
(b) the occupier of the premises, or another person apparently representing the occupier, is present at the premises;
the inspector must, as soon as practicable after entering the premises, show:
(c) his or her identity card; or
(d) written evidence identifying the inspector as a member or special member of the Australian Federal Police or an officer of Customs;
to the occupier or other person.

53C Details of warrant etc. to be given to occupier

(1) If:
(a) an enforcement warrant is being executed in relation to premises; and
(b) the occupier of the premises, or another person apparently representing the occupier, is present at the premises;
the inspector executing the warrant must, as soon as practicable, make a copy of the enforcement warrant available to the occupier or other person.

(2) The copy need not include the signature of the magistrate who issued the enforcement warrant.
Subdivision D—General provisions relating to seizure etc.

53D Receipts for seized things and seizure notice

Receipts

(1) If a thing is seized under section 53, the inspector must provide a receipt for the thing.

(2) If 2 or more things are seized, they may be covered in the one receipt.

Notice

(3) The receipt must be accompanied by a notice that sets out, in summary form, an explanation of sections 53E, 53F, 53G, 53H, 53J, 53K and 53L.

53E Copies of seized things to be provided

(1) If, under an enforcement warrant relating to premises, 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:

(c) the occupier of the premises; or

(d) another person who apparently represents the occupier and who is present when the warrant is executed;

give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.

(2) However, subsection (1) does not apply if:

(a) the thing that has been seized was seized under paragraph 53(4)(b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence against a law of the Commonwealth.
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53F  Inspection of seized books, records or documents

If:
(a) an inspector seizes a book, record or document under section 53; and
(b) the book, record or document is in the inspector’s possession;
the inspector must permit a person who would be entitled to inspect the book, record or document if it were not in the inspector’s possession to inspect the book, record or document at all reasonable times.

53G  Return of seized things

(1) Subject to any contrary order of a court, if:
(a) an inspector seizes a thing under section 53; and
(b) a forfeiture notice has not been given in relation to the thing;
the inspector must return it if:
(c) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
(d) the period of 60 days after its seizure ends;
whichever first occurs, unless the thing is forfeited to the Commonwealth.

Note: For forfeiture, see Division 3.

(2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the thing to the person from whom it was seized, unless:
(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) an inspector may retain the thing because of an order under section 53H; or
(c) the owner of the thing consents to the thing not being returned; or
(d) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
(e) 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 or dispose of the thing.

53H Magistrate may permit seized things to be retained

(1) An inspector may apply to a magistrate for an order that he or she
may retain 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 an inspector to
continue to retain the thing:
(a) for the purpose of an investigation as to whether:
   (i) an offence against this Act or the regulations has been
   committed; or
   (ii) a civil penalty provision has been contravened; or
(b) to enable:
   (i) evidence of an offence against this Act or the
   regulations to be secured for the purpose of a
   prosecution; or
   (ii) evidence of a contravention of a civil penalty provision
   to be secured for the purpose of civil proceedings;
the magistrate may order that an inspector may retain the thing for
a period (not exceeding 3 years) specified in the order.

(3) Before making the application, the inspector 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
inspector believes to have such an interest of the proposed
application.
53J  Powers to take samples and conduct tests

Taking samples

(1) If an inspector seizes gas or another substance under section 53, the inspector may arrange for samples to be taken of the gas or other substance by the inspector or another person.

(2) The regulations may prescribe procedures for dealing with samples taken under this Division.

(3) The regulations may provide for compensation to be paid for samples taken under this Division.

Conducting tests

(4) If a sample of gas or another substance is taken by an inspector under this Division, the inspector may arrange for tests to be conducted on the sample by the inspector or another person.

(5) The regulations may prescribe procedures for the conduct of tests under this Division.

Substantial compliance with procedures

(6) The regulations may provide that:

(a) particular procedures prescribed for the purposes of this section need not be strictly complied with; and

(b) substantial compliance is sufficient.

(7) However, subsection (6) does not apply to procedures for ensuring that a sample is not interfered with by anyone who is not authorised to do so.

53K  Directions about how pressurised container is to be dealt with

Scope

(1) This section applies if an inspector seizes a pressurised container under section 53.
Application for direction

(2) The inspector may apply to the Minister or Secretary for a direction under subsection (3).

Direction

(3) If:
   (a) the inspector applies to the Minister or Secretary for a direction under subsection (2); and
   (b) the Minister or Secretary, as the case may be, is satisfied that the pressurised container constitutes a danger to public health and safety;

   the Minister or Secretary, as the case may be, may direct that the pressurised container must be dealt with in a manner specified in the direction.

(4) A direction under subsection (3) may require the pressurised container and its contents to be destroyed.

(5) Subsection (4) does not limit subsection (3).

(6) The inspector must comply with a direction under subsection (3).

(7) A direction under subsection (3) is not a legislative instrument.

Compensation

(8) If a pressurised container and its contents is destroyed under this section, the owner of the container may apply to a designated court for compensation.

(9) On application under subsection (8), the designated court must order the Commonwealth to pay compensation if the court is satisfied that the pressurised container did not contain forfeitable goods.

(10) The amount of compensation ordered must be the market value of the pressurised container and its contents at the time they were destroyed.

53L Disposal of goods if person cannot be located

(1) If:
(a) a thing is seized under section 53; and
(b) apart from this section, the thing is required to be returned to a person; and
(c) the Secretary cannot, despite making reasonable efforts, locate the person;
the Secretary may dispose of the thing, or cause the thing to be disposed of, in such manner as he or she thinks appropriate.

(2) The Secretary may, by writing, delegate any or all of his or her powers under subsection (1) to an SES employee or acting SES employee.

Note: The expressions SES employee and acting SES employee are defined in the Acts Interpretation Act 1901.

(3) A delegate must comply with any written directions of the Secretary.

Subdivision E—Obligations and incidental powers of inspectors

53M  Consent

(1) An inspector must, before obtaining the consent of a person to enter premises under this Division, inform the person that he or she may refuse consent.

(2) An entry of an inspector with the consent of a person is not lawful unless the person voluntarily consented to the entry.

87  Section 55

Repeal the section, substitute:

55  Inspection of books, records or documents removed by, or produced to, inspectors

If:
(a) either:
(i) an inspector removes a book, record or document under paragraph 51A(1)(c); or
(ii) a person produces a book, record or document to an inspector in compliance with a requirement under subsection 54(1); and
55A Return of books, records or documents removed by, or produced to, inspectors

(1) Subject to any contrary order of a court, if:

(a) either:
   (i) an inspector removes a book, record or document under paragraph 51A(1)(e); or
   (ii) a person produces a book, record or document to an inspector in compliance with a requirement under subsection 54(1); and

(b) the book, record or document is in the inspector’s possession;

the inspector must return the book, record or document if:

(c) the reason for its removal or production no longer exists or it is decided that it is not to be used in evidence; or

(d) the period of 60 days after its removal or production ends; whichever first occurs, unless the book, record or document is forfeited to the Commonwealth.

Note: For forfeiture, see Division 3.

(2) At the end of the 60 days specified in subsection (1), an inspector must take reasonable steps to return the book, record or document to the person from whom it was removed, or who produced it, unless:

(a) proceedings in respect of which the book, record or document 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) an inspector may retain the book, record or document because of an order under section 55B; or

(c) the owner of the book, record or document consents to it not being returned; or
(d) 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 or dispose of the book, record or document.

55B Magistrate may permit books, records or documents to be retained

(1) An inspector may apply to a magistrate for an order that he or she may retain the book, record or document for a further period if:

(a) before the end of 60 days after the removal or production of the book, record or document; 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 book, record or document may afford evidence have not commenced.

(2) If the magistrate is satisfied that it is necessary for an inspector to continue to retain the book, record or document:

(a) for the purpose of an investigation as to whether:

(i) an offence against this Act or the regulations has been committed; or

(ii) a civil penalty provision has been contravened; or

(b) to enable:

(i) evidence of an offence against this Act or the regulations to be secured for the purpose of a prosecution; or

(ii) evidence of a contravention of a civil penalty provision to be secured for the purpose of civil proceedings; the magistrate may order that an inspector may retain the book, record or document for a period (not exceeding 3 years) specified in the order.

(3) Before making the application, the inspector must:

(a) take reasonable steps to discover who has an interest in the retention of the book, record or document; and

(b) if it is practicable to do so, notify each person whom the inspector believes to have such an interest of the proposed application.
55C Securing electronic equipment for use by experts

(1) If an inspector believes on reasonable grounds that:
   (a) any of the following:
      (i) information that is relevant to ascertaining whether this
          Act or the regulations have been complied with;
      (ii) evidential material;
          may be accessible by operating electronic equipment at
          particular premises; and
   (b) expert assistance is required to operate the equipment; and
   (c) if he or she does not take action under this subsection, the
       information or material may be destroyed, altered or
       otherwise interfered with;
       he or she may do whatever is necessary to secure the equipment,
       whether by locking it up, placing a guard or otherwise.

Notice to occupier

(2) 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 secure the equipment and of the fact that the
     equipment may be secured for up to 24 hours.

Period during which equipment may be secured

(3) The equipment may be secured:
   (a) for a period not exceeding 24 hours; or
   (b) until the equipment has been operated by the expert;
       whichever happens first.

Extensions

(4) If the inspector believes on reasonable grounds that the expert
    assistance will not be available within 24 hours, he or she may
    apply to a magistrate for an order extending that period.

(5) 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, and the occupier is entitled
    to be heard in relation to the application.
(6) The magistrate may order an extension for a period specified in the order if the magistrate is satisfied that the extension is necessary.

55D Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in this Division:
   (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 designated court for such reasonable amount of compensation as the designated 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 and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) In this section:

   damage, in relation to data, includes damage by erasure of data or addition of other data.
Subdivision F—Enforcement warrants

55E Enforcement warrants

Application for an enforcement warrant

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

Issue of an enforcement warrant

(2) The magistrate may issue the enforcement warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.

(3) However, the magistrate must not issue the enforcement 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 an enforcement warrant

(4) The enforcement warrant must:

(a) name one or more inspectors; and

(b) authorise the inspectors so named, with such assistance and by such force as is necessary and reasonable:

(i) to enter the premises; and

(ii) to exercise the enforcement powers set out in section 53; and

(c) 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

(d) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and

(e) state the purpose for which the warrant is issued.
Application for an enforcement warrant

(1) If, in an urgent case, an inspector considers it necessary to do so, the inspector may apply to a magistrate by telephone, telex, fax or other electronic means for an enforcement warrant in relation to premises.

(2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

(3) Before applying for the enforcement warrant, the inspector must prepare an information of the kind mentioned in subsection 55E(2) in relation to the premises that sets out the grounds on which the warrant is sought.

(4) If it is necessary to do so, the inspector may apply for the enforcement warrant before the information is sworn.

Issue of an enforcement warrant

(5) If the magistrate is satisfied:

(a) after having considered the terms of the information; and
(b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the enforcement warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 55E if the application had been made under that section.

Obligations of magistrate and inspector once an enforcement warrant issued

(6) If the magistrate completes and signs the enforcement warrant:

(a) the magistrate must:

(i) tell the inspector what the terms of the warrant are; and
(ii) tell the inspector the day on which and the time at which the warrant was signed; and
(iii) 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; and
(iv) record on the warrant the reasons for issuing the warrant; and
(b) the inspector must:
   (i) complete a form of enforcement warrant in the same terms as the warrant completed and signed by the magistrate; and
   (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) The inspector must also, not later than the day after the day of expiry or execution of the enforcement warrant, whichever is the earlier, send to the magistrate:
   (a) the form of enforcement warrant completed by the inspector; and
   (b) the information referred to in subsection (3), which must have been duly sworn.

(8) When the magistrate receives those documents, the magistrate must:
   (a) attach them to the enforcement 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 55E.

Authority of an enforcement warrant

(9) A form of enforcement warrant duly completed under subsection (6) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the magistrate authorises.

(10) If:
   (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
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(b) the enforcement warrant signed by the magistrate authorising
the exercise of the power is not produced in evidence;
the court must assume, unless the contrary is proved, that the
exercise of the power was not authorised by such a warrant.

55G  Offences relating to warrants

(1) A person commits an offence if:
   (a) the person is an inspector; and
   (b) the person makes an application for an enforcement warrant;
       and
   (c) the application includes a statement; and
   (d) the statement is false or misleading in a material particular.

       Penalty: Imprisonment for 2 years.

(2) The fault element for paragraph (1)(d) is knowledge.

(3) A person commits an offence if:
   (a) the person is an inspector; and
   (b) the person prepares a document that purports to be a form of
       enforcement warrant under section 55F; and
   (c) the document states the name of a magistrate; and
   (d) the magistrate named did not issue the enforcement warrant.

       Penalty: Imprisonment for 2 years.

(4) A person commits an offence if:
   (a) the person is an inspector; and
   (b) the person prepares a document that purports to be a form of
       enforcement warrant under section 55F; and
   (c) the document states a matter; and
   (d) the matter departs in a material particular from the form
       authorised by the magistrate.

       Penalty: Imprisonment for 2 years.

(5) The fault element for paragraph (4)(d) is knowledge.

(6) A person commits an offence if:
   (a) the person is an inspector; and
   (b) the person:
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(i) purports to execute; or
(ii) presents to another person;
a document that purports to be a form of enforcement warrant under section 55F; and
(c) the document:
(i) has not been approved by a magistrate under section 55F; or
(ii) departs in a material particular from the terms authorised by that section.

Penalty: Imprisonment for 2 years.

(7) The fault element for paragraph (6)(c) is knowledge.

(8) A person commits an offence if:
(a) the person is an inspector; and
(b) the person gives a form of enforcement warrant under section 55F to a magistrate; and
(c) the form of enforcement warrant is not the form of enforcement warrant that the inspector purported to execute.

Penalty for contravention of this subsection: Imprisonment for 2 years.

Subdivision G—Powers of magistrates

55H 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 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.

Section 57

Repeal the section, substitute:

Subdivision A—Forfeitable goods

Forfeitable goods

(1) For the purposes of this Act, the following goods are forfeitable goods:
   (a) scheduled substances in respect of the manufacture of which:
      (i) a person has been convicted of an offence under section 13; or
      (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
      (iii) a person has contravened section 13;
   (b) scheduled substances in respect of the import of which:
      (i) a person has been convicted of an offence under section 13; or
      (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
      (iii) a person has contravened section 13;
   (c) scheduled substances in respect of the export of which:
      (i) a person has been convicted of an offence under section 13; or
      (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 13; or
      (iii) a person has contravened section 13;
(d) products that contain scheduled substances, or that use scheduled substances in their operation, where:
   (i) a person has been convicted of an offence against section 38 in respect of the manufacture or import of the products; or
   (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 38 in respect of the manufacture or import of the products; or
   (iii) a person has contravened section 38 in respect of the manufacture or import of the products;

(e) products that contain scheduled substances, or that use scheduled substances in their operation, where:
   (i) a person has been convicted of an offence against regulations made for the purposes of section 39 in respect of the manufacture, import, export, distribution or use of the products; or
   (ii) a person has contravened regulations made for the purposes of section 39 in respect of the manufacture, import, export, distribution or use of the products;

(f) products that contain scheduled substances, where:
   (i) a person has been convicted of an offence against section 44 in respect of the import of the products; or
   (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 44 in respect of the import of the products; or
   (iii) a person has contravened section 44 in respect of the import of the products;

(g) products in the manufacture of which scheduled substances were used, where:
   (i) a person has been convicted of an offence against section 45 in respect of the import of the products; or
   (ii) a civil penalty order has been made against a person for a contravention of a civil penalty provision set out in section 45 in respect of the import of the products; or
   (iii) a person has contravened section 45 in respect of the import of the products;

(h) prescribed goods in respect of which:
(i) a person has been convicted of an offence against a
prescribed provision of the regulations; or
(ii) a civil penalty order has been made against a person for
a contravention of a civil penalty provision set out in the
regulations; or
(iii) a person has contravened a prescribed provision of the
regulations.

(2) For the purposes of this Act, goods are also forfeitable goods if:
(a) the goods are a quantity of scheduled substances or products;
and
(b) the goods are mixed with another quantity of scheduled
substances or products (the other quantity) of the same kind
or a similar kind; and
(c) the other quantity is forfeitable goods.

89 Before section 58
Insert:

Subdivision B—Forfeiture following conviction or making of
civil penalty order

90 Section 58
Before “Where”, insert“(1)”.

91 Section 58
After “a provision of this Act”, insert “or the regulations”.

92 At the end of section 58
Add:

(2) If a civil penalty order has been made against a person for a
contravention of a civil penalty provision referred to in subsection
57(1), all forfeitable goods to which the contravention relates are,
by force of the order, forfeited to the Commonwealth.

93 After section 60
Insert:
Subdivision C—Forfeiture of seized goods

60A Forfeiture notices

(1) If:
   (a) an inspector seizes goods under section 53; and
   (b) the inspector suspects, on reasonable grounds, that the goods
       are forfeitable goods;
   the inspector may, within 7 days after the seizure, give a written
   notice (a *forfeiture notice*) to:
       (c) the owner of the goods; or
       (d) if the owner of the goods cannot be identified after
           reasonable inquiry—the person from whom the goods were
           seized.

(2) The forfeiture notice must:
   (a) identify the goods; and
   (b) state that the goods have been seized; and
   (c) specify the reason for the seizure; and
   (d) state that the goods will be forfeited to the Commonwealth
       unless:
       (i) the owner of the thing, or the person from whom the
           thing was seized, applies to a designated court under
           section 60B within 60 days after the forfeiture notice is
           given; and
       (ii) the court makes an order that the goods are not
           forfeitable goods; and
   (e) specify the address of the Secretary.

60B Claims that seized goods are not forfeitable goods

(1) If a forfeiture notice is given under section 60A in relation to goods
    (the *identified goods*), either of the following persons:
    (a) the owner of the goods;
    (b) the person from whom the goods were seized;
    may apply to a designated court for:
    (c) an order that all of the identified goods are not forfeitable
        goods; or

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(d) an order that specified identified goods are not forfeitable goods.

(2) The application must be made within 60 days after forfeiture notice is given.

(3) If a person applies for an order under paragraph (1)(c), the court must:
   (a) make the order if it is satisfied that the identified goods are not forfeitable goods; or
   (b) refuse to make the order if it is not satisfied that the identified goods are not forfeitable goods.

(4) If a person applies for an order under paragraph (1)(d), the court must:
   (a) make the order if it is satisfied that the goods specified in the application are not forfeitable goods; or
   (b) refuse to make the order if it is not satisfied that the goods specified in the application are not forfeitable goods.

(5) If the court makes an order under paragraph (3)(a) or (4)(a) in relation to goods, the inspector must take reasonable steps to return the goods to the applicant, unless:
   (a) proceedings in respect of which the goods may afford evidence were instituted before the order was made and have not been completed (including an appeal to a court in relation to those proceedings); or
   (b) to return the goods could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; or
   (c) 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 or dispose of the goods.

60C Forfeiture of seized goods to the Commonwealth

(1) If:
   (a) a forfeiture notice has been given in relation to seized goods; and
   (b) 60 days pass after the notice is given, and an application under section 60B has not been made in relation to the goods;
the goods are forfeited to the Commonwealth at the end of the 60th
day after the day the forfeiture notice was given.

(2) If:
   (a) a forfeiture notice has been given in relation to seized goods; and
   (b) within 60 days after the notice is given, an application under
       section 60B is made to a designated court for an order that
       the goods are not forfeitable goods; and
   (c) the court refuses to make the order;
the goods are forfeited to the Commonwealth when the court
refuses to make the order.

60D Right of compensation in certain circumstances

(1) If:
   (a) goods are seized under section 53; and
   (b) the goods are forfeited to the Commonwealth under
       section 60C;
the owner of the goods may apply to a designated court for
compensation.

(2) On application under subsection (1), the court must order that the
Commonwealth pay compensation to the owner of the goods if the
court is satisfied that:
   (a) the applicant is the owner of the goods; and
   (b) either:
       (i) Division 1 was not complied with in relation to the
           seizure of the goods; or
       (ii) the goods were not forfeitable goods.

(3) The amount of compensation ordered must be the market value of
the goods at the time the goods were forfeited.

Subdivision D—General provisions

60E Forfeited goods become the property of the Commonwealth

Goods that are forfeited to the Commonwealth under this Division
become the property of the Commonwealth.
94 Section 61
Before “Goods”, insert “(1)”.

95 Section 61
After “section 58”, insert “or section 60C”.

96 At the end of section 61
Add:
(2) The forfeited goods must not be sold.

97 Subsection 62(1)
After “this Act”, insert “or the regulations”.

98 Subsection 63(1)
After “inspector”, insert “, or a person assisting an inspector under section 51B or 53A,”.

99 At the end of Part VIII
Add:

Division 5—Infringement notices

65AA Infringement notices

Infringement notices for offences
(1) The regulations may make provision enabling a person who is alleged to have committed:
(a) an offence against any of the following provisions:
   (i) section 13;
   (ii) section 18;
   (iii) section 38;
   (iv) section 44;
   (v) section 45;
   (vi) section 45B;
   (vii) section 46; or
(b) a specified offence against the regulations;

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(2) The penalty must not exceed:
   (a) if the person is not a body corporate—12 penalty units; or
   (b) if the person is a body corporate—60 penalty units.

Infringement notices for contraventions of civil penalty provisions

(3) The regulations may make provision enabling a person who is
    alleged to have contravened a particular civil penalty provision to
    pay a specified penalty to the Commonwealth as an alternative to
    proceedings for a civil penalty order.

(4) The penalty must not exceed:
    (a) if the person is not a body corporate—12 penalty units; or
    (b) if the person is a body corporate—60 penalty units.

Division 6—Ancillary contravention of civil penalty provisions

65AB Ancillary contravention of civil penalty provision

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

(2) Subsection (1) is a civil penalty provision.

Note 1: Division 7 provides for pecuniary penalties for breaches of civil
   penalty provisions.

Note 2: For maximum penalty, see subsection 65AC(5).
Division 7—Civil penalty orders

65AC Civil penalty orders

(1) If a designated court is satisfied that a person has contravened a civil penalty provision, the court may order the person to pay the Commonwealth a pecuniary penalty.

(2) An order under subsection (1) is to be known as a civil penalty order.

Determining amount of pecuniary penalty

(3) 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 or the regulations to have engaged in any similar conduct; and
   (e) the extent to which the person has co-operated 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.

Maximum pecuniary penalty

(4) The pecuniary penalty payable by a person in respect of a contravention of a civil penalty provision (other than subsection 65AB(1)) must not exceed:
   (a) if an offence against a provision of this Act or the regulations corresponds to the civil penalty provision—the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of the offence; or
(b) otherwise:
   (i) if the person is not a body corporate—50 penalty units;
       or
   (ii) if the person is a body corporate—250 penalty units.

(5) The pecuniary penalty payable by a person in respect of a contravention of subsection 65AB(1) that relates to another civil penalty provision must not exceed:
   (a) if an offence against a provision of this Act or the regulations corresponds to the other civil penalty provision—the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of the offence;
       or
   (b) otherwise:
       (i) if the person is not a body corporate—50 penalty units;
           or
       (ii) if the person is a body corporate—250 penalty units.

Civil enforcement of penalty

(6) A pecuniary penalty is a civil debt payable to the Commonwealth. 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.

65AD Who may apply for a civil penalty order

(1) Only the Minister may apply for a civil penalty order.

(2) Subsection (1) does not exclude the operation of the Director of Public Prosecutions Act 1983.

65AE Two or more proceedings may be heard together

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

65AF Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.
Schedule 1  General amendments

65AG  Civil evidence and procedure rules for civil penalty orders

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

65AH  Civil proceedings after criminal proceedings

The designated 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 substantially the same as the conduct constituting the contravention.

65AI  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 started or have already been started against the person for an offence; and
   (b) the offence is constituted by conduct that is 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.

65AJ  Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is 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.

65AK  Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

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 substantially
the same as the conduct that was claimed to constitute the
contravention.
However, this 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.

65AL 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.
65AM  State of mind

Scope

(1) This section applies to proceedings for a civil penalty order against
a person for a contravention of a civil penalty provision (other than
subsection 65AB(1)).

State of mind

(2) In the proceedings, 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.

(3) Subsection (2) does not affect the operation of section 65AL.

100  At the end of paragraph 65C(1)(b)
Add “or the regulations”.

101  At the end of section 65C
Add:

Notional payments and receipts by Agencies

(2) If:
(a) either:
   (i) an Agency makes a notional payment to another
       Agency; or
   (ii) one part of an Agency makes a notional payment to
        another part of that Agency; and
(b) the transaction would involve the debiting of an
    appropriation if the notional payment were a real payment;
    then:
    (c) this section applies in relation to the notional payment as if it
        were a real payment to the Commonwealth; and
(d) this section applies in relation to the notional receipt of the notional payment as if it were a real receipt by the Commonwealth.

Note: This subsection applies to transactions that do not actually involve payments or receipts, because the parties to the transaction are merely parts of the Commonwealth, or acting as agents for the Commonwealth. For example, Agency 1 “pays” Agency 2 for services provided by Agency 2.

(3) In subsection (2):

Agency has the same meaning as in the Financial Management and Accountability Act 1997.

102 After paragraph 65D(c)

Insert:

(ca) paying or reimbursing the Commonwealth’s costs associated with research relating to:

(i) substances that deplete ozone in the atmosphere; or
(ii) synthetic greenhouse gases;

103 Subsection 67A(1)

After “this Act”, insert “or the regulations”.

104 Subsection 67A(2)

Omit “19A or 20”, substitute “19A, 20 or 53K”.

105 After section 69B

Insert:

69C Jurisdiction of State courts

(1) The courts of the States are invested with federal jurisdiction in relation to matters arising under:

(a) this Act; and
(b) the regulations.

(2) Jurisdiction is invested under subsection (1) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).
69D  Jurisdiction of Territory courts

(1) Jurisdiction is conferred on the courts of the Territories in relation to matters arising under:

(a) this Act; and

(b) the regulations.

(2) Jurisdiction is conferred under subsection (1):

(a) only so far as the Constitution permits; and

(b) within the limits (other than limits of locality) of the jurisdiction of the court (whether those limits are limits as to subject matter or otherwise).

69E  Compensation for acquisition of property

(1) If the operation of this Act or the regulations 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 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.

69F  Arrangements with States and Territories—magistrates

*States*

(1) The Minister may make arrangements with a Minister of a State in relation to the performance of the functions of a magistrate under this Act by a magistrate of that State.
(2) The Minister may arrange with a Minister of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Australian Capital Territory

(3) The Minister may make arrangements with a Minister of the Australian Capital Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory.

(4) The Minister may arrange with a Minister of the Australian Capital Territory for the variation or revocation of an arrangement in force under subsection (3).

Northern Territory

(5) The Minister may make arrangements with a Minister of the Northern Territory in relation to the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory.

(6) The Minister may arrange with a Minister of the Northern Territory for the variation or revocation of an arrangement in force under subsection (5).

Norfolk Island

(7) The Minister may make arrangements with the Administrator of Norfolk Island in relation to the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island.

(8) The Minister may arrange with the Administrator of Norfolk Island for the variation or revocation of an arrangement in force under subsection (7).

Gazettal

(9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the Gazette.
Schedule 1  General amendments

Legislative Instruments Act

(10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

106 Section 70

Omit “$1,000”, substitute “50 penalty units”.

107 Section 70

Omit “$5,000”, substitute “250 penalty units”.

108 After subclause 10(1) of Schedule 4

Insert:

(1A) Subclause (1) does not apply to equipment specified in the regulations.

Note: For specification by class, see subsection 13(3) of the Legislative Instruments Act 2003.

109 Transitional—declarations under subsection 44(3) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

(1) This item applies to a declaration that:

(a) was made under subsection 44(3) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989; and

(b) was in force immediately before the commencement of this item.

(2) The declaration has effect, after the commencement of this item, as if a reference in the declaration to subsection 44(1) of that Act included a reference to subsection 44(2A) of that Act as amended by this Schedule.

110 Transitional—declarations under subsection 44(6) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

(1) This item applies to a declaration that:

(a) was made under subsection 44(6) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989; and

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(b) was in force immediately before the commencement of this item.

(2) The declaration has effect, after the commencement of this item, as if a reference in the declaration to subsection 44(5) of that Act included a reference to subsection 44(5B) of that Act as amended by this Schedule.

111 Transitional—declarations under subsection 45(3) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

(1) This item applies to a declaration that:
   (a) was made under subsection 45(3) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989; and
   (b) was in force immediately before the commencement of this item.

(2) The declaration has effect, after the commencement of this item, as if a reference in the declaration to subsection 45(1) of that Act included a reference to subsection 45(2A) of that Act as amended by this Schedule.

112 Transitional—declarations under subsection 45(3B) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

(1) This item applies to a declaration that:
   (a) was made under subsection 45(3B) of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989; and
   (b) was in force immediately before the commencement of this item.

(2) The declaration has effect, after the commencement of this item, as if a reference in the declaration to subsection 45(3A) of that Act included a reference to subsection 45(3AB) of that Act as amended by this Schedule.

113 Application—reports under section 46 of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

The amendments of section 46 of the Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 made by this Schedule apply in relation to a quarter starting after the commencement of this item.
114 Application—licence periods of pre-charged equipment licences

The amendments of section 19 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* made by this Schedule apply in relation to a pre-charged equipment licence granted after the commencement of this item.

115 Application—appointment of inspectors

Subsection 49(3) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* as amended by this Schedule applies in relation to an appointment made after the commencement of this item.

116 Transitional—books, records or documents seized, removed or produced before commencement

(1) This item applies to a book, record or document that was:

(a) removed from premises under subsection 51(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; or

(b) seized under section 52 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*; or

(c) produced to an inspector in accordance with a requirement made under subsection 54(1) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*;

before the commencement of this item.

(2) Despite the repeal of section 55 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* by this Schedule, that section continues to apply to the book, record or document, as if that repeal had not happened.

117 Transitional—things seized before commencement

(1) This item applies to a thing that was seized under section 52 before the commencement of this item.

(2) Despite the repeal of subsections 52(6) and (7) of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* by this Schedule, those subsections continue to apply to the thing, as if that repeal had not happened.
118 Transitional—forfeitable goods

Section 57 of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, as amended by this Schedule, in so far as that section relates to a contravention, applies to a contravention that occurred before, at or after the commencement of this item.
Schedule 2—Other amendments

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

1 Paragraph 10(1)(a) of Schedule 4
After “CFC refrigerant”, insert “or an HCFC refrigerant”.

2 Paragraph 10(1)(b) of Schedule 4
Repeal the paragraph, substitute:

(b) the equipment is designed to operate by using a CFC refrigerant or an HCFC refrigerant (whether or not it is also designed to operate using another substance); or

3 At the end of paragraph 10(1)(c) of Schedule 4
Add “or an HCFC”.

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