



# **Product Emissions Standards Act 2017**

**No. 104, 2017**

**An Act to improve air quality by regulating  
emissions from certain products, and for related  
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Product Emissions Standards Act 2017

No. 104, 2017

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**An Act to improve air quality by regulating  
emissions from certain products, and for related  
purposes**

*[Assented to 14 September 2017]*

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

This Act is the *Product Emissions Standards Act 2017*.

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### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	15 September 2017

Note: This table relates only to the provisions of this Act as originally enacted.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

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

### 3 Objects of this Act

The objects of this Act are:

- (a) to regulate emissions from certain products by setting emissions standards; and
- (b) in doing so, to achieve either or both of the following:
  - (i) contribute to improving air quality in Australia in order to deliver associated health and environmental benefits;
  - (ii) assist in giving effect to Australia's obligations under one or more of the Climate Change Conventions.

Note: For *Climate Change Conventions*, see section 7.

### 4 Simplified outline of this Act

This Act creates a framework for regulating emissions from products.

The Act provides for an emissions-controlled product to be certified. To be certified, the product must meet an emissions standard.

A person who imports or supplies an emissions-controlled product that is not certified will commit an offence. There are also offences related to false or incorrect marking of products as certified. Civil penalties are included as alternatives to offences.

Products dealt with in breach of the Act are forfeited to the Commonwealth.

The rules may exempt persons or products from the operation of the Act.

Record-keeping requirements and regulatory powers (mostly drawn from the Regulatory Powers Act) are included to assist in enforcing the Act.

The operation of the Act is to be reviewed periodically.

## **5 Extension to external Territories**

- (1) This Act extends to every external Territory.
- (2) The Regulatory Powers Act, as it applies in relation to this Act, extends to every external Territory.

## **6 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be:
  - (a) prosecuted for an offence; or
  - (b) subject to civil proceedings for a civil penalty order under Part 4 of the Regulatory Powers Act; or
  - (c) given an infringement notice under Part 5 of the Regulatory Powers Act.

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- (3) The protection in subsection (2) does not apply to an authority of the Crown.

### 7 Definitions

- (1) In this Act:

***Australia*** includes the external Territories.

***certified for the purposes of this Act*** means certified for the purposes of this Act in accordance with the rules.

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

***Climate Change Conventions*** means:

- (a) the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992; and
- (b) the Kyoto Protocol to the United Nations Framework Convention on Climate Change, done at Kyoto on 11 December 1997; and
- (c) the Paris Agreement, done at Paris on 12 December 2015; as amended and in force for Australia from time to time.

Note: The Convention, the Protocol and the Agreement are in Australian Treaty Series 1994 No. 2 ([1994] ATS 2), 2008 No. 2 ([2008] ATS 2) and 2016 No. 24 ([2016] ATS 24), respectively. In 2017 they could be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>)

***emissions-controlled product*** means a product that is prescribed by the rules for the purposes of section 9.

***emissions standard*** means a standard dealing with matters relating to emissions from products.

***engage in conduct*** includes omitting to perform an act.

***evidential material*** has the same meaning as in the Regulatory Powers Act.

***forfeiture notice*** has the meaning given by subsection 34(2).



**inspector** means a person appointed under section 41.

**manufacture**, for a product prescribed for the purposes of the definition of **product**, means produce by any method.

**mark** includes label.

**person assisting** an authorised person has the same meaning as in the Regulatory Powers Act.

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

- (a) manufactured; or
- (b) prescribed by the rules for the purposes of this definition.

**regulatory authority** includes a regulatory authority of, or located in, a foreign country.

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

**reporting period**, for an emissions-controlled product, means a period prescribed by the rules.

**rules** means rules made under section 51.

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

**supply**, in relation to a product, has the meaning given by subsection (2).

**this Act** includes instruments made under this Act.

- (2) A **supply** of a product means a supply in the course of trading or commercial activities.
- (3) For the purposes of subsection (2), supply includes:
  - (a) an offer to supply (including making available, exposing, displaying or advertising the product); and
  - (b) a supply (including a resupply) by way of sale, exchange, gift, lease, loan, hire or hire-purchase; and
  - (c) a supply as part of the supply of another thing.

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- (4) For the purposes of subsection (2), it is irrelevant whether the supply is:
- (a) for consideration; or
  - (b) a wholesale or retail supply.

## Part 2—Emissions-controlled products

### 8 Simplified outline of this Part

The rules may prescribe a product as an emissions-controlled product.

The rules may provide for an emissions-controlled product to be certified. A minimum requirement for certification is that the product meets an emissions standard.

The rules may exempt persons or products from the operation of the Act.

### 9 Emissions-controlled products

The rules may prescribe a product as an emissions-controlled product.

### 10 Certification

- (1) The rules may provide for an emissions-controlled product to be certified for the purposes of this Act.

*Product must meet emissions standard*

- (2) However, the rules must not provide for a product to be certified for the purposes of this Act unless:
- (a) the Secretary is satisfied that the product complies with an emissions standard set out in the rules for the product; or
  - (b) the product is certified:
    - (i) by a regulatory authority specified in the rules for the product; and
    - (ii) as meeting an emissions standard specified in the rules for the product.

Note: For **regulatory authority**, see section 7.

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### *Other requirements*

- (3) The rules may prescribe other requirements for, or in relation to, certifying a product for the purposes of this Act.
- (4) Without limiting subsection (3), the requirements may include requirements relating to the following:
  - (a) applications for certification;
  - (b) processes and criteria for certification, including testing;
  - (c) processes for suspending or revoking certification;
  - (d) the use of marks to indicate certification.

Note: The rules may provide for charging fees and for review of decisions: see subsection 51(2).

## 11 Exemptions

- (1) The rules may provide for the exemption of:
  - (a) a specified emissions-controlled product from one or more provisions of this Act; or
  - (b) a specified emissions-controlled product or person from one or more provisions of this Act in the circumstances set out in the rules.

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

- (2) Without limiting paragraph (1)(b), the circumstances may include that a person has:
  - (a) applied for and been granted an exemption; or
  - (b) given the Secretary specified notice or information; or
  - (c) taken other action required by the rules.

- (3) The rules may provide processes for, and other requirements in relation to, obtaining, varying, suspending or revoking exemptions.

Note: The rules may provide for charging fees: see subsection 51(2).

- (4) The rules may provide for the Secretary to make decisions in relation to exemptions, including deciding whether to grant an exemption.

Note: The rules may provide for review of decisions: see subsection 51(2).

## **Part 3—Enforcing product emissions standards**

### **Division 1—Simplified outline of this Part**

#### **12 Simplified outline of this Part**

Offences and civil penalties apply:

- (a) if an emissions-controlled product is imported or supplied and the product is not certified, or marked as required; and
- (b) for marking a product that is not certified, and for marking a product incorrectly.

## **Division 2—Importing emissions-controlled products**

### **13 Import of product that is not certified**

- (1) A person contravenes this subsection if:
  - (a) the person imports a product; and
  - (b) the product is an emissions-controlled product; and
  - (c) the product is not certified for the purposes of this Act.
- (2) For the purposes of paragraph (1)(c), a product is taken to be not certified if the certification of the product is suspended.

#### *Strict liability offence*

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

Penalty: 60 penalty units.

#### *Civil penalty provision*

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

Civil penalty: 120 penalty units.

### **14 Import of product that is not marked as required**

- (1) A person contravenes this subsection if:
  - (a) the person imports a product; and
  - (b) the product is an emissions-controlled product that is certified for the purposes of this Act; and
  - (c) the rules impose requirements for marking the product; and
  - (d) the product is not marked in the way required by the rules.

#### *Strict liability offence*

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

Penalty: 60 penalty units.

*Civil penalty provision*

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

Civil penalty: 120 penalty units.

## **Division 3—Supplying emissions-controlled products**

### **15 Supply of product that is not certified**

- (1) A person contravenes this subsection if:
  - (a) the person supplies a product; and
  - (b) the product is an emissions-controlled product; and
  - (c) the product is not certified for the purposes of this Act.
- (2) For the purposes of paragraph (1)(c), a product is taken to be not certified if the certification of the product is suspended.

#### *Strict liability offence*

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

Penalty: 60 penalty units.

#### *Civil penalty provision*

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

Civil penalty: 120 penalty units.

### **16 Supply of product that is not marked as required**

- (1) A person contravenes this subsection if:
  - (a) the person supplies a product; and
  - (b) the product is an emissions-controlled product that is certified for the purposes of this Act; and
  - (c) the rules impose requirements for marking the product; and
  - (d) the product is not marked in the way required by the rules.

#### *Strict liability offence*

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



Penalty: 60 penalty units.

*Civil penalty provision*

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

Civil penalty: 120 penalty units.

## **Division 4—Marking emissions-controlled products**

### **17 Marking product that is not certified**

- (1) A person contravenes this subsection if:
  - (a) the person applies a mark to a product; and
  - (b) the product is to be imported into, or supplied in, Australia; and
  - (c) the product is an emissions-controlled product; and
  - (d) the rules require the product to be marked if the product is certified for the purposes of this Act; and
  - (e) the mark indicates that the product is so certified; and
  - (f) the product is not so certified.
- (2) For the purposes of paragraph (1)(f), a product is taken to be not certified if the certification of the product is suspended.

#### *Strict liability offence*

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

Penalty: 60 penalty units.

#### *Civil penalty provision*

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

Civil penalty: 120 penalty units.

### **18 Incorrect marking of product**

- (1) A person contravenes this subsection if:
  - (a) the person applies a mark to a product; and
  - (b) the product is to be imported into, or supplied in, Australia; and
  - (c) the product is an emissions-controlled product; and

- (d) the rules impose requirements for marking the product if the product is certified for the purposes of this Act; and
- (e) the mark indicates that the product is so certified; and
- (f) the mark is not in accordance with the requirements in the rules.

*Strict liability offence*

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

Penalty: 60 penalty units.

*Civil penalty provision*

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

Civil penalty: 120 penalty units.

## Part 4—Record keeping

### 19 Simplified outline of this Part

Importers and suppliers of emissions-controlled products may be required to keep records and to give the Secretary the recorded information.

Reports may also be required on the supply of emissions-controlled products manufactured in Australia.

### 20 Rules may provide record-keeping requirements

- (1) The rules may require a person who imports or supplies emissions-controlled products to make and keep records in relation to the imports or supplies.
- (2) A person contravenes this subsection if:
  - (a) the rules require the person to make or keep a record; and
  - (b) the person fails to comply with the requirement.

#### *Strict liability offence*

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

Penalty: 40 penalty units.

#### *Civil penalty provision*

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

Civil penalty: 80 penalty units.

**21 Secretary may require recorded information**

- (1) The Secretary may, by notice in writing, require a person to give the Secretary information that the person is required by the rules to keep in a record, if the Secretary reasonably suspects that:
  - (a) a provision of this Act has been contravened or is being contravened; and
  - (b) the information is relevant to the suspected contravention.
- (2) The notice must:
  - (a) identify the information that must be given to the Secretary; and
  - (b) state the day the information must be given by, which must be a reasonable period after the notice is given to the person.
- (3) The Secretary may, on application by the person, change the day the information must be given by to a later day.
- (4) A person contravenes this subsection if:
  - (a) the person is required to give information under this section; and
  - (b) the person fails to comply with the requirement.

*Strict liability offence*

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

Penalty: 40 penalty units.

*Civil penalty provision*

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

Civil penalty: 80 penalty units.

**22 Reporting on supply of products manufactured in Australia**

- (1) The rules may prescribe a reporting period for an emissions-controlled product.
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- (2) If, during a reporting period for an emissions-controlled product that is manufactured in Australia, a person makes the first supply of the product, the person must give to the Secretary a report containing the information prescribed by the rules relating to such products that the person has so supplied during the reporting period.
- (3) The report must be given to the Secretary no later than 60 days after the end of the reporting period.
- (4) A reference to supply in subsection (2) does not include an offer to supply.

Note: For the usual definition of *supply* in this Act, see subsections 7(2) to (4).

- (5) A person contravenes this subsection if:
  - (a) the person is required by subsection (2) to give a report to the Secretary for a reporting period for an emissions-controlled product; and
  - (b) the person does not give the Secretary the report in the period ending 60 days after the end of the reporting period.

### *Strict liability offence*

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

Penalty: 60 penalty units.

### *Civil penalty provision*

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

Civil penalty: 120 penalty units.

## Part 5—Regulatory powers

### 23 Simplified outline of this Part

This Part applies the Regulatory Powers Act to the product emissions standards framework.

### 24 Monitoring powers

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
- (a) a provision of this Act; or
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether this Act has been complied with. It includes powers of entry and inspection.

- (2) Information given in compliance or purported compliance with a provision of this Act is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

- (3) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) there are no related provisions; and
  - (b) an inspector is an authorised applicant; and
  - (c) an inspector is an authorised person; and
  - (d) a magistrate is an issuing officer; and
  - (e) the Secretary is the relevant chief executive; and
  - (f) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;

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- (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to offences and civil penalty provisions of this Act.

### 25 Investigation powers

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
  - (a) an offence provision of this Act; or
  - (b) a civil penalty provision of this Act; or
  - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

- (2) For the purposes of Part 3 of the Regulatory Powers Act as it applies in relation to this Act:
  - (a) there are no related provisions; and
  - (b) an inspector is an authorised applicant; and
  - (c) an inspector is an authorised person; and
  - (d) a magistrate is an issuing officer; and
  - (e) the Secretary is the relevant chief executive; and
  - (f) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to offences and civil penalty provisions of this Act.



**26 Civil penalty provisions**

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

- (2) For the purposes of Part 4 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an authorised applicant; and
  - (b) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

**27 Infringement notices**

- (1) The following provisions are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) an offence provision of this Act that is an offence of strict liability;
  - (b) a civil penalty provision of this Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

- (2) For the purposes of Part 5 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an infringement officer; and
  - (b) the Secretary is the relevant chief executive.

**28 Enforceable undertakings**

- (1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (a) an offence provision of this Act;
  - (b) a civil penalty provision of this Act.

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Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

- (2) For the purposes of Part 6 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an authorised person; and
  - (b) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

**29 Injunctions**

- (1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:
- (a) an offence provision of this Act;
  - (b) a civil penalty provision of this Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

- (2) For the purposes of Part 7 of the Regulatory Powers Act as it applies in relation to this Act:
- (a) an inspector is an authorised person; and
  - (b) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

## **Part 6—Forfeiture of emissions-controlled products**

### **Division 1—Simplified outline of this Part**

#### **30 Simplified outline of this Part**

An emissions-controlled product is forfeited when a provision of Part 3 (relating to the import, supply or marking of the product) is contravened in relation to the product.

An emissions-controlled product may also be forfeited when it has been seized as part of an investigation and an inspector reasonably suspects a provision in Part 3 has been contravened. A court may order the return of a product so seized, or that compensation be paid.

## **Division 2—Forfeiture following conviction or making of civil penalty order**

### **31 Product forfeited to Commonwealth**

- (1) This section applies if a person is convicted of an offence, or ordered to pay a civil penalty, for contravening a provision of Part 3.
- (2) The product concerned is forfeited to the Commonwealth.

### **32 Power to seize forfeited product**

- (1) An inspector may seize a product that is forfeited under section 31.
- (2) Without limiting subsection (1), the product may be seized by attaching to the product, or to the container in which the product is held, a notice in writing signed by the inspector that:
  - (a) identifies the product; and
  - (b) states that the product has been seized under this section; and
  - (c) specifies the reason for the seizure.
- (3) An inspector must give a copy of the notice as soon as practicable to the owner of the product or the person from whom the product was seized.

### **33 Person must not interfere with seized product**

- (1) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct causes an emissions-controlled product to be moved, altered or interfered with; and
  - (c) the product is the subject of a notice under subsection 32(2).

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person engages in the conduct in accordance with a direction given to the person by the Minister.

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

- (3) A person commits an offence if:
- (a) the person is given a notice under subsection 32(3); and
  - (b) the person does not take all reasonable precautions to prevent the product being moved, altered or interfered with except in accordance with a direction given by the Minister.

Penalty: Imprisonment for 6 months.

## **Division 3—Forfeiture of seized products**

### **34 Forfeiture notices**

- (1) This section applies if:
  - (a) an inspector seizes an emissions-controlled product under Part 3 of the Regulatory Powers Act as it applies in relation to this Act; and
  - (b) the inspector reasonably suspects that a provision of Part 3 of this Act was contravened in relation to the product.
- (2) The inspector may, within 7 days after the product is seized, give a written notice (the **forfeiture notice**) to the owner of the product.
- (3) If the owner of the product cannot be identified after reasonable inquiry, the inspector may give the forfeiture notice to the person from whom the product was seized.
- (4) The notice must:
  - (a) identify the product; and
  - (b) state that the product has been seized; and
  - (c) specify the reason for the seizure; and
  - (d) state that the product will be forfeited to the Commonwealth unless a court, on application under section 35, orders the product to be returned.

### **35 Claims for return of seized product**

- (1) This section applies if a forfeiture notice is given in relation to an emissions-controlled product.
- (2) The owner of the product or the person from whom the product was seized may apply to one of the following for an order that the product be returned:
  - (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia;
  - (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

- (3) The application must be made within 60 days after the forfeiture notice is given.
- (4) The court must order that the product be returned if:
  - (a) an application for the order was made in accordance with this section; and
  - (b) the court is satisfied that no provision of Part 3 was contravened in relation to the product.
- (5) If the court orders that the product be returned, the Commonwealth must take reasonable steps to return the product to the applicant.
- (6) Subsection (5) does not apply if:
  - (a) proceedings for which the product may provide evidence were instituted before the order was made, and have not been completed (including any appeal); or
  - (b) returning the product 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) to retain, destroy or dispose of the product.

### **36 Forfeiture of seized product to the Commonwealth**

A product in relation to which a forfeiture notice is given is forfeited to the Commonwealth if:

- (a) no application has been made under section 35 for an order that the product be returned; or
- (b) such an application has been made, and the court decides not to so order.

### **37 Right of compensation in certain circumstances**

- (1) The person who owned an emissions-controlled product forfeited to the Commonwealth under section 36 may apply to one of the following for compensation:
  - (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia;

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- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.
- (2) The court must order that the Commonwealth pay compensation to the applicant if the court is satisfied that:
  - (a) the applicant owned the product immediately before it was forfeited; and
  - (b) either:
    - (i) Part 3 of the Regulatory Powers Act, as it applies in relation to this Act, was not complied with in relation to the seizure of the product; or
    - (ii) if the product was forfeited under paragraph 36(a)—no provision of Part 3 of this Act was contravened in relation to the product.
- (3) The amount of compensation must be the market value of the product at the time the product was forfeited under section 36.



## **Division 4—General provisions**

### **38 Forfeited products become property of Commonwealth**

Products forfeited to the Commonwealth under section 31 or 36 become the property of the Commonwealth.

### **39 Disposal of forfeited products**

- (1) Products forfeited under section 31 or 36 must be dealt with and disposed of in accordance with the directions of the Minister.
- (2) The forfeited products must not be sold.

## Part 7—Miscellaneous

### 40 Simplified outline of this Part

This Part deals with the appointment of inspectors, the publication and disclosure of information, and the conduct of audits to ensure compliance with this Act.

It also provides for the delegation of powers, requires periodic reviews of the operation of the Act, and enables the Minister to make rules.

### 41 Inspectors

- (1) The Secretary may, in writing, appoint an APS employee 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 the knowledge or experience necessary to properly exercise the powers of an inspector.
- (3) An inspector must, in performing functions or exercising powers as an inspector, comply with any directions of the Secretary.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### 42 Publication of information relating to certifications and exemptions

- (1) The Secretary may publish information relating to an emissions-controlled product that is certified for the purposes of this Act, including but not limited to:
  - (a) information that identifies the product and the manufacturer of the product; and
  - (b) information about emissions from the product; and

- (c) information about the certification.
- (2) The Secretary may publish information relating to an exemption of an emissions-controlled product or a person from a provision of this Act, including but not limited to:
  - (a) circumstances in which the exemption applies; and
  - (b) reasons for the exemption; and
  - (c) the person who applied for the exemption.

#### **43 Disclosure of information**

- (1) The Secretary may disclose information obtained under this Act to:
  - (a) the Australian Border Force (within the meaning of the *Australian Border Force Act 2015*); or
  - (b) an agency, body or person prescribed by the rules;if the Secretary reasonably believes that the information will enable or assist the agency, body or person to exercise its powers, or perform its functions or duties.

Note: Subsection 51(6) has requirements relating to rules made for the purposes of paragraph (b).
- (2) This section does not limit any other powers the Secretary has to disclose information to a person.

#### **44 Compliance audits**

- (1) This section applies if the Minister:
    - (a) reasonably suspects that a person has engaged or is engaging in conduct that constitutes:
      - (i) an offence against this Act; or
      - (ii) a contravention of a civil penalty provision; and
    - (b) is satisfied that it would be in the public interest to give the person a notice under this section.
  - (2) The Minister may, by written notice given to the person, require the person:
    - (a) to undertake, or arrange for another person to undertake, an audit of whichever of the following is specified in the notice:
      - (i) the person's compliance with this Act;
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- (ii) one or more specified aspects of the person's compliance with this Act; and
  - (b) to give the Minister a written report setting out the results of the audit.
- (3) The notice must specify:
  - (a) if the notice requires the person to arrange another person to undertake the audit—requirements relating to the qualifications and independence of the other person; and
  - (b) the matters to be covered by the audit; and
  - (c) the period within which the audit must be undertaken; and
  - (d) the form and content of the report; and
  - (e) the period within which the report must be given to the Minister.
- (4) A notice under subsection (2) is not a legislative instrument.
- (5) A person contravenes this subsection if the person is subject to a requirement under subsection (2) and the person fails to comply with the requirement.

### *Strict liability offence*

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

Penalty: 40 penalty units.

### *Civil penalty provision*

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

Civil penalty: 80 penalty units.

## **45 Delegation by the Minister**

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Act (except section 51) to:
  - (a) the Secretary; or

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- (b) an SES employee, or acting SES employee, in the Department.

Note 1: Section 51 gives the Minister power to make rules.

Note 2: The expressions **SES employee** and **acting SES employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

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

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

#### **46 Delegation by the Secretary**

- (1) The Secretary may, by writing, delegate all or any of his or her powers or functions under this Act, or the Regulatory Powers Act as it applies in relation to this Act, to:

- (a) an SES employee or acting SES employee in the Department;  
or  
(b) an APS employee who occupies, or performs the duties of, a position not below Executive Level 2 or equivalent in the Department.

Note: The expressions **SES employee**, **acting SES employee** and **APS employee** are defined in section 2B of the *Acts Interpretation Act 1901*.

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

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

#### **47 Review of operation of Act**

- (1) The Minister must cause a review of the operation of this Act to be undertaken as soon as possible after the seventh anniversary of its commencement and afterwards at intervals of no longer than 10 years.
- (2) The person undertaking a review must give the Minister a written report of the review.

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- (3) The Minister must cause a copy of the report of a review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

### 48 Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct rule provision***) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

### 49 Contravening offence and civil penalty provisions

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

### 50 Alternative constitutional bases

- (1) Without limiting the effect of this Act apart from this section, this Act also has effect as provided by this section.
- (2) To avoid doubt, no subsection of this section limits the operation of any other subsection.

#### *Import*

- (3) This Act has the effect it would have if each reference to import were expressly confined to import in the course of trade or commerce.

*Supply*

- (4) This Act has the effect it would have if each reference to supply were expressly confined to supply in the course of trade or commerce:
- (a) between Australia and places outside Australia; or
  - (b) among the States; or
  - (c) within a Territory, between a State and a Territory or between 2 Territories.

*Corporations power*

- (5) This Act has the effect it would have if each reference to a person were expressly confined to a corporation to which paragraph 51(xx) of the Constitution applies.

**51 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the rules may provide for:
- (a) charging fees for services provided in the performance of functions under this Act; and
  - (b) the review of decisions made under this Act.
- (3) Rules setting out an emissions standard for the purposes of paragraph 10(2)(a) may apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time if the instrument or writing is produced by one or more of the following:
- (a) the International Electrotechnical Commission;
  - (b) the International Organization for Standardization;
  - (c) the United Nations Economic Commission for Europe;
  - (d) any other organisation prescribed by the rules.

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- (4) Rules specifying an emissions standard for the purposes of subparagraph 10(2)(b)(ii) may specify a standard as in force or existing from time to time.
- (5) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (6) Before making rules for the purposes of paragraph 43(1)(b), the Minister must consult the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*) and have regard to any submissions made by the Information Commissioner because of that consultation.
- (7) The rules may provide for the collection and recovery of charges imposed by the *Product Emissions Standards (Customs) Charges Act 2017* and the *Product Emissions Standards (Excise) Charges Act 2017*.

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[Minister's second reading speech made in—  
House of Representatives on 10 August 2017  
Senate on 7 September 2017]

(152/17)

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