



Fuel Quality Standards Act 2000

No. 153, 2000

**An Act to regulate activities involving fuel and fuel
additives, and for related purposes**

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Fuel Quality Standards Act 2000

No. 153, 2000

An Act to regulate activities involving fuel and fuel additives, and for related purposes

[Assented to 21 December 2000]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Fuel Quality Standards Act 2000*.

2 Commencement

This Act commences on a day or days to be fixed by Proclamation.

Section 3

3 Main object of Act

The main object of this Act is to regulate the quality of fuel supplied in Australia in order to:

- (a) reduce the level of pollutants and emissions arising from the use of fuel that may cause environmental and health problems; and
- (b) facilitate the adoption of better engine technology and emission control technology; and
- (c) allow the more effective operation of engines.

4 Definitions

- (1) In this Act, unless the contrary intention appears:

approval means an approval under section 13.

Australia, when used in a geographical sense, includes the external Territories (other than Norfolk Island).

Commonwealth entity means any of the following:

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

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

constitutional trade or commerce means trade or commerce:

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

emergency law means:

- (a) the *Liquid Fuel Emergency Act 1984*; or

(b) a law specified in a determination under subsection (2).

evidential material means any of the following:

- (a) a thing with respect to which an offence against this Act has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of any such offence;
- (c) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing any such offence.

fuel has the meaning given by the regulations.

fuel additive has the meaning given by the regulations.

fuel standard means a standard under section 21.

Note: See also section 5.

inspector means a person appointed as an inspector under section 38.

monitoring warrant means a warrant issued under section 59.

offence against this Act includes an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act.

Note: See also section 11.6 of the *Criminal Code*.

offence-related warrant means:

- (a) a warrant issued under section 60; or
- (b) a warrant signed by a magistrate under section 61.

premises means:

- (a) an area of land or any other place (whether or not it is enclosed or built on); or
- (b) a building or other structure; or
- (c) a vehicle, vessel or aircraft; or
- (d) a part of any such premises.

Register means the Register of Prohibited Fuel Additives kept under section 32.

Section 5

Secretary means the Secretary of the Department.

supply means supply (including re-supply) by way of sale, exchange or gift.

thing includes a substance, and a thing in electronic or magnetic form.

- (2) The Minister may, by written determination, specify a law of the Commonwealth, a State or a Territory for the purposes of the definition of **emergency law** in subsection (1).
- (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

5 Applicable fuel standard for fuel supplies

A reference in this Act to a fuel standard, in relation to a supply of fuel, is a reference to the standard as it applies in relation to the area in which the supply occurs.

Note: A fuel standard may apply more stringently in respect of supplies of the fuel in particular areas in Australia: see subsection 21(2).

6 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) However, nothing in this Act makes the Crown liable to be prosecuted for an offence.

7 External Territories

This Act extends to every external Territory other than Norfolk Island.

8 Relationship to other Commonwealth laws

The provisions of this Act are in addition to, and not in substitution for, the requirements of any other law of the Commonwealth.

9 Relationship to State and Territory laws

- (1) Subject to this section, it is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.
- (2) It is the intention of the Parliament that, to the extent prescribed by the regulations, this Act is to apply to the exclusion of a law of a State or Territory relating to the supply of fuel that is the subject of a fuel standard.

10 Offences

- (1) The *Criminal Code* applies to all offences against this Act.
- (2) If a maximum penalty is specified:
 - (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
 - (b) at the foot of a subsection of this Act;then:
 - (c) a person who contravenes the section or subsection is guilty of an offence punishable, on conviction, by a penalty not exceeding the specified penalty; or
 - (d) the offence referred to in the section or subsection is punishable, on conviction, by a penalty not exceeding the specified penalty.

Part 2—Regulation of fuel and fuel additives

Division 1—Overview

11 Overview of Part

This Part sets out a regulatory regime in relation to activities involving fuel and fuel additives.

Division 2 creates an offence relating to the supply of fuel that does not comply with a fuel standard.

Division 3 deals with the granting of approvals to vary a fuel standard.

Division 4 deals with fuel documentation that is required for certain supplies of fuel in Australia.

Division 5 creates an offence relating to the alteration of fuel.

Division 6 deals with the making of fuel standards and the consultation required beforehand.

Division 7 creates offences relating to the supply or importation of a fuel additive that is covered by an entry in the Register of Prohibited Fuel Additives.

Division 8 deals with keeping the Register and the process to be followed before entries are made in it.

Division 2—Supply of fuel

12 Supply of fuel

- (1) A person is guilty of an offence if:
- (a) the person supplies fuel in Australia that is the subject of a fuel standard; and
 - (b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce; and
 - (c) the fuel does not comply with the standard; and
 - (e) if any person holds an approval that varies the standard in respect of the supply—the fuel does not comply with the standard as varied; and
 - (f) the supply is not in order to comply with a direction or order under an emergency law.

Maximum penalty: 1,000 penalty units.

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

- (2) However, the person is not guilty of the offence if the person believes on reasonable grounds that the fuel that is supplied will be further processed for the purpose of bringing the fuel into compliance with the standard or the standard as varied.

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

Division 3—Approvals

13 Grant of approval

- (1) The Minister may grant to any person an approval in writing that, in respect of specified fuel that is the subject of a fuel standard, varies the standard in a specified way in respect of specified supplies of the fuel by:
 - (a) that person; or
 - (b) any other specified person (a *regulated person*).
- (2) An approval under subsection (1) comes into force on the day specified in the approval and remains in force for the period specified in the approval.

14 Application for approval

- (1) An application for an approval must be made in accordance with the regulations.
- (2) The application must be accompanied by the application fee (if any) prescribed by the regulations.

15 Criteria for granting approval

- (1) The Minister must have regard to the following when deciding whether or not to grant an approval:
 - (a) the protection of the environment;
 - (b) the protection of occupational and public health and safety;
 - (c) the interests of consumers;
 - (d) the impact on economic and regional development.
- (2) The Minister may also have regard to any other matters he or she considers relevant.

16 Conditions of approval

An approval is subject to the following conditions:

- (a) the conditions set out in section 17;
- (b) any conditions specified in the approval.

17 Condition about informing people of obligations

- (1) It is a condition of an approval that its holder, within the period prescribed by the regulations, inform any regulated person, to whom a particular condition of the approval applies, of the following:
 - (a) the particular condition, including any variation of it;
 - (b) any revocation of the approval.

Note: For *regulated person*, see section 13.

- (2) Requirements in relation to the manner in which information is provided under subsection (1) may be prescribed by the regulations.
- (3) If such requirements are prescribed, it is a condition of the approval that its holder comply with the requirements.

17A Approvals and reasons for approvals to be made public

As soon as practicable after granting an approval under section 13, the Minister must cause to be published in the *Gazette* a notice containing the following information:

- (a) the name of the person to whom the approval has been granted;
- (b) the period of operation of the approval;
- (c) details of the approved variation of the fuel standard;
- (d) reasons for granting the approval.

18 Person must not contravene conditions of approval

Holder of approval

- (1) The holder of an approval is guilty of an offence if:
 - (a) the holder intentionally takes an action or omits to take an action; and

Part 2 Regulation of fuel and fuel additives

Division 3 Approvals

Section 18

- (b) the holder is a constitutional corporation or a Commonwealth entity or the action or omission occurs in the course of constitutional trade or commerce; and
- (c) the action or omission contravenes a condition of the approval; and
- (d) the holder knows that the action or omission contravenes the condition or is reckless as to whether or not the action or omission contravenes the condition.

Maximum penalty: 100 penalty units.

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

Regulated person

- (2) A regulated person is guilty of an offence if:
 - (a) the person intentionally takes an action or omits to take an action; and
 - (b) the person is a constitutional corporation or a Commonwealth entity or the action or omission occurs in the course of constitutional trade or commerce; and
 - (c) the action or omission contravenes a condition of the approval concerned; and
 - (d) the person has knowledge of the condition; and
 - (e) the person knows that the action or omission contravenes the condition or is reckless as to whether or not the action or omission contravenes the condition.

Maximum penalty: 100 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For *regulated person*, see section 13.

Division 4—Fuel documentation

19 Supplies of fuel to be accompanied by documentation

If:

- (a) a person (the *supplier*) supplies fuel in Australia to another person and the fuel is the subject of a fuel standard; and
- (b) the supplier is a constitutional corporation or a Commonwealth entity or the supplier supplies the fuel in the course of constitutional trade or commerce; and
- (c) the other person is not the end-user of the fuel;

the supplier must, within the period prescribed by the regulations, provide the other person with a document or documents containing:

- (d) a statement as to whether or not the fuel complies with the standard; and
- (e) any other information relating to the fuel that is prescribed by the regulations.

Maximum penalty: 60 penalty units.

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

Division 5—Alteration of fuel

20 Altering fuel the subject of a fuel standard

- (1) A person is guilty of an offence if:
- (a) the person alters in any way fuel in Australia that is the subject of a fuel standard; and
 - (b) the person is a constitutional corporation or a Commonwealth entity or the person alters the fuel in the course of, or for any purpose that is incidental to, constitutional trade or commerce; and
 - (c) the person alters the fuel with the intention of using it in Australia; and
 - (d) the fuel as altered does not comply with the base standard (whether or not the fuel complied with that standard before the alteration); and
 - (e) if:
 - (i) the fuel was supplied to the person in Australia; and
 - (ii) any person held an approval varying the standard in respect of that supply;the fuel as altered does not comply with that standard as varied (whether or not the fuel complied with that standard as varied before the alteration).

Note: See section 5 for the applicable standard in respect of that supply.

Maximum penalty: 1,000 penalty units.

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

- (2) For the purposes of subsection (1), **base standard** means the standard determined under section 21, disregarding the application of subsection 21(2).

Division 6—Fuel standards

21 Making of standards

Base standard

- (1) The Minister may, in writing, determine that specified matters constitute a fuel standard in respect of a specified kind of fuel.

More stringent standard

- (2) The fuel standard may provide for more stringent parameters to apply in respect of supplies of the fuel in specified areas in Australia.

Minister must not give preference

- (3) In applying subsection (2), the Minister must not give preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

Determinations are disallowable

- (4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Regard to be had to main object of Act

- (5) In making a determination under this section, the Minister must have regard to the main object of this Act.

22 Guidelines for more stringent standards

- (1) The Minister must develop written guidelines that he or she must have regard to in applying subsection 21(2).
- (2) The guidelines are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 24

24 Fuel Standards Consultative Committee

The Fuel Standards Consultative Committee is established.

24A Consultation

- (1) The Minister must consult the Fuel Standards Consultative Committee:
 - (a) before granting an approval under section 13; and
 - (b) before making a determination under section 21; and
 - (c) before making a decision under subsection 35(2); and
 - (d) in preparing guidelines under section 22.
- (2) The requirement to consult the Committee before granting an approval under section 13 includes the requirement to consult the Committee in respect of the period for which the approval is to be in force.
- (3) The Minister is not required to consult the Committee in relation to a determination made under section 21 within 6 months after the commencement of that section.
- (4) The Minister must have regard to any recommendations of the Committee arising out of the consultation.

25 Membership of Committee

- (1) The Committee consists of such members as the Minister determines.

Membership

- (2) However, the Minister must ensure that the membership includes the following:
 - (a) 1 representative of each State, the Australian Capital Territory and the Northern Territory;
 - (b) 1 representative of the Commonwealth;
 - (c) 1 person representing fuel producers;
 - (d) 1 person representing a non-government body with an interest in the protection of the environment;

- (e) 1 person representing the interests of consumers.

Appointment

- (3) The Minister must appoint members by written instrument.

Chair

- (4) The Minister must appoint a member to be the Chair of the Committee.

Part-time office

- (5) Each member holds office on a part-time basis.

26 Procedures of Committee

The Committee is to determine its own procedures.

27 Expert advisers

- (1) The Minister may appoint one or more persons (*expert advisers*) to give expert advice to the Fuel Standards Consultative Committee to assist the Committee in commenting on matters about which the Minister is required to consult the Committee.
- (2) The Minister must appoint expert advisers by written instrument.
- (3) Expert advisers are not members of the Committee.

28 Remuneration

- (1) A person who is a member of the Fuel Standards Consultative Committee or an expert adviser is to be paid the remuneration that is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration by the Tribunal is in operation, the member or expert adviser is to be paid the remuneration that is prescribed by the regulations.

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Division 6 Fuel standards

Section 29

- (3) A person who is a member of the Fuel Standards Consultative Committee or an expert adviser is to be paid the allowances that are prescribed by the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

29 Appointment conditions of committee members etc.

The regulations may prescribe matters relating to the members of the Fuel Standards Consultative Committee and expert advisers, including, but not limited to, the following:

- (a) term of appointment;
- (b) resignation;
- (c) disclosure of interests;
- (d) termination of appointment;
- (e) leave of absence.

Division 7—Supply and importation of fuel additives

30 Supply of a fuel additive

A person is guilty of an offence if:

- (a) the person supplies a fuel additive in Australia; and
- (b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel additive in the course of constitutional trade or commerce; and
- (c) the fuel additive is covered by an entry in the Register.

Maximum penalty: 500 penalty units.

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

31 Importation of a fuel additive

A person is guilty of an offence if:

- (a) the person imports a fuel additive into Australia; and
- (b) the fuel additive is covered by an entry in the Register.

Maximum penalty: 500 penalty units.

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

Division 8—Register of Prohibited Fuel Additives

32 Minister to keep Register

- (1) The Minister must keep a Register of Prohibited Fuel Additives.
- (2) The Register may be maintained by electronic means.

33 Inspection of the Register

- (1) The Minister must make the Register available for any person to inspect it at the times and places published in the *Gazette*.
- (2) The Register is also to be made available for inspection on the Internet.

34 Notice of proposed entries in the Register

- (1) The Minister may:
 - (a) enter a fuel additive, or a class of fuel additives, in the Register; or
 - (b) remove a fuel additive, or a class of fuel additives, from the Register.
- (2) Before doing so, the Minister must publish, in accordance with the regulations, notice of the action he or she is proposing to take.
- (3) The notice must:
 - (a) invite persons to make submissions on the proposal; and
 - (b) specify the addresses (including an Internet address) to which submissions may be sent; and
 - (c) specify the day by which submissions must be sent (which must be at least 60 days after the day the notice is published).

35 Minister to consider submissions and make a decision

Minister to consider submissions

- (1) The Minister must consider all submissions received by the day specified in the notice.

Minister's decision

- (2) The Minister must then make a decision whether or not to:
 - (a) enter the fuel additive, or the class of fuel additives, in the Register; or
 - (b) remove the fuel additive, or the class of fuel additives, from the Register.

General notice

- (3) The Minister must publish, in accordance with the regulations, notice of his or her decision.

Notice to persons who made submissions

- (4) The Minister must also give notice of his or her decision to each person who made a submission. The notice must include a statement to the effect that an application may be made to the Administrative Review Tribunal for review of the decision.

36 Guidelines for making a decision

- (1) The Minister must develop written guidelines that he or she must have regard to when deciding whether or not to:
 - (a) enter a fuel additive, or a class of fuel additives, in the Register; or
 - (b) remove a fuel additive, or a class of fuel additives, from the Register.
- (2) The guidelines are to be made available for inspection on the Internet.
- (3) The guidelines are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 3—Enforcement

Division 1—Overview

37 Overview of Part

This Part mainly sets out an enforcement regime for the purpose of finding out whether this Act has been complied with or of assessing the correctness of information provided under this Act.

Division 2 provides for the appointment of inspectors.

Divisions 3 to 7 deal with the powers and obligations of inspectors and the rights and responsibilities of an occupier of premises when an inspector seeks to exercise powers.

Division 8 deals with monitoring warrants and offence-related warrants.

Division 9 deals with the powers of magistrates under this Part.

Division 10 deals with injunctions restraining a person from engaging in conduct that would otherwise be an offence against this Act.

Division 2—Appointment of inspectors and identity cards

38 Appointment of inspectors

- (1) The Secretary may, in writing, appoint any of the following persons as an inspector for the purposes of this Act:
 - (a) a person who is appointed or employed by the Commonwealth;
 - (b) a person who is appointed or employed by a State or Territory.
- (2) The Secretary must not appoint a person as an inspector unless the Secretary is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.
- (3) An inspector must, in exercising powers or performing functions as an inspector, comply with any directions of the Secretary.

39 Identity card

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

Form of identity card

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

Offence

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

Maximum penalty: 1 penalty unit.

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

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Division 2 Appointment of inspectors and identity cards

Section 39

- (4) This offence is one of strict liability.

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

Defence: card lost or destroyed

- (5) However, the person is not guilty of the offence if the identity card was lost or destroyed.

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

Inspector must carry card

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

Division 3—Monitoring powers

40 Powers available to inspectors for monitoring compliance

- (1) For the purpose of finding out whether this Act has been complied with or of assessing the correctness of information provided under this Act, an inspector may:
 - (a) enter any premises; and
 - (b) exercise the monitoring powers set out in section 41.
- (2) However, an inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises has consented to the entry; or
 - (b) the entry is made under a monitoring warrant.

41 Monitoring powers

General powers

- (1) For the purposes of this Part, the following are the **monitoring powers** that an inspector may exercise in relation to premises under section 40:
 - (a) to search the premises and any thing on the premises;
 - (b) to inspect, examine, take measurements of, conduct tests on, or take samples of, any fuel or fuel additive 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 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) to secure a thing, until an offence-related warrant is obtained to seize it:
 - (i) that the inspector finds during the exercise of monitoring powers on the premises; and

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Division 3 Monitoring powers

Section 41

- (ii) that the inspector believes on reasonable grounds is evidential material; and
 - (iii) that the inspector believes on reasonable grounds would be lost, destroyed or tampered with before the warrant can be obtained;
- (h) the powers in subsections (2) and (3).

Operation of equipment

- (2) For the purposes of this Part, the **monitoring powers** include the power to operate equipment at premises to find out whether:
- (a) the equipment; or
 - (b) a disk, tape or other storage device that is at the premises and can be used with the equipment or is associated with it;
- contains information that is relevant to:
- (c) determining whether there has been compliance with this Act; or
 - (d) assessing the correctness of information provided under this Act.

Removing documents and disks etc.

- (3) For the purposes of this Part, if the inspector, after operating the equipment, finds that the equipment, or that a disk, tape or other storage device at the premises, contains such information, the **monitoring powers** include the following powers:
- (a) to operate facilities at the premises to put the information in documentary form and remove the documents so produced;
 - (b) to operate facilities 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;and remove the disk, tape or other storage device from the premises.

How powers to be exercised

- (4) The powers mentioned in subsections (2) and (3) must be exercised in accordance with section 49.

42 Inspector on premises under warrant may require persons to answer questions etc.

- (1) An inspector who is authorised to enter premises by a monitoring warrant may require any person in or on the premises to:
- (a) answer any questions put by the inspector; or
 - (b) produce any book, record or document requested by the inspector.
- (2) A person is guilty of an offence if the person refuses or fails to comply with a requirement under subsection (1).

Maximum penalty: Imprisonment for 6 months.

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

- (3) A person is excused from complying with a requirement under subsection (1) if the answer to the question or the production of the book, record or document might tend to incriminate the person or expose the person to a penalty.

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

Division 4—Offence-related powers

43 Searches and seizures related to offences

- (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 offence-related powers set out in section 44.
- (2) However, an inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises has consented to the entry; or
 - (b) the entry is made under an offence-related warrant.
- (3) If the entry is under an offence-related warrant, the inspector may seize the evidential material if the inspector finds it on the premises.

44 Offence-related powers

General powers

- (1) For the purposes of this Part, the following are the ***offence-related powers*** that an inspector may exercise in relation to premises under section 43:
 - (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) and (7).

Operation of equipment

- (2) For the purposes of this Part, the ***offence-related powers*** include the power to operate equipment at premises to find out whether evidential material is accessible by doing so.

Removing documents and disks etc.

- (3) For the purposes of this Part, if the inspector, after operating the equipment, finds that evidential material is accessible by doing so, the ***offence-related powers*** include the following powers:
- (a) to seize the equipment and any disk, tape or other associated device;
 - (b) to operate the equipment or other facilities at the premises to put the evidential material in documentary form and seize the documents so produced;
 - (c) to operate the equipment or other facilities at the premises to transfer the material to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.

How powers to be exercised

- (4) The powers mentioned in subsections (2) and (3) must be exercised in accordance with section 49.

Seizing equipment

- (5) An inspector may seize equipment under paragraph (3)(a) only if:
- (a) it is not practicable to put the material in documentary form as mentioned in paragraph (3)(b) or to transfer the material as mentioned in paragraph (3)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence against a law of the Commonwealth.

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Division 4 Offence-related powers

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- (6) An inspector may seize equipment under paragraph (3)(a) or documents under paragraph (3)(b) only if the inspector entered the premises under an offence-related warrant.

Seizing other evidential material

- (7) If:
- (a) in the course of searching for a particular thing, in accordance with an offence-related 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 in committing, continuing or repeating an offence against this Act;
- then the *offence-related powers* include seizing that other thing.

Division 5—Obligations and incidental powers of inspectors

45 Inspector must produce identity card on request

An inspector is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

46 Consent

- (1) An inspector must, before obtaining the consent of a person to enter premises under this Part, 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.

47 Announcement before entry

- (1) An inspector must, before entering premises under a warrant:
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) 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 ensure the safety of a person; or
 - (b) to prevent serious damage to the environment; or
 - (c) to ensure that the effective execution of the warrant is not frustrated.

48 Details of warrant to be given to occupier etc.

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector must make available to the occupier or other person a copy of the warrant.
- (2) The inspector must identify himself or herself to that person.
- (3) The copy of the warrant need not include the signature of the magistrate who issued the warrant.

49 Use of electronic equipment already at premises

An inspector may operate electronic equipment at premises in order to exercise a power under this Part if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

50 Securing electronic equipment for use by experts

- (1) If an inspector believes on reasonable grounds that:
 - (a) any of the following:
 - (i) information relevant to determining whether there has been compliance with this Act;
 - (ii) information relevant to assessing the correctness of information provided under this Act;
 - (iii) 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 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 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 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.

51 Compensation for damage to electronic equipment

- (1) If:
- (a) damage is caused to equipment as a result of it being operated as mentioned in this Part; or
 - (b) the data recorded on the equipment is damaged or programs associated with its use are damaged or corrupted;
- because:
- (c) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (d) insufficient care was exercised by the person operating the equipment;
- the owner of the equipment, or the user of the data or programs, is entitled to compensation for the damage or corruption.

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Division 5 Obligations and incidental powers of inspectors

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Amount of compensation

- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation as the Commonwealth and the owner or user agree on.
- (3) However, if the Commonwealth and the owner or user fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) Compensation is payable out of money appropriated by the Parliament.
- (5) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Damage to data

- (6) For the purposes of subsection (1), ***damage to data*** includes damage by erasure of data or addition of other data.

Division 6—Occupier's rights and responsibilities

52 Occupier entitled to be present during search

- (1) If a warrant in relation to premises is being executed and the occupier of the premises, or another person who apparently represents the occupier is present at the premises, the occupier or other person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the occupier or other person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

53 Occupier to provide inspector with all facilities and assistance

- (1) The occupier of premises in relation to which a warrant is being exercised, or another person who apparently represents the occupier, must provide the inspector executing the warrant and any person assisting that inspector with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person is guilty of an offence if the person fails to comply with the obligation set out in subsection (1).

Maximum penalty: 30 penalty units.

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

Division 7—General provisions relating to seizure

54 Copies of seized things to be provided

- (1) If, under an offence-related 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 the occupier of the premises, or 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 44(3)(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.

55 Receipts for things seized

- (1) If a thing is seized under this Part, 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.

56 Return of seized things

- (1) Subject to any contrary order of a court, if an inspector seizes a thing under this Part, the inspector must return it if:
 - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (b) the period of 60 days after its seizure ends;

whichever first occurs, unless the thing is forfeited or forfeitable to the Commonwealth.

- (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 57; or
 - (c) to return the thing could cause an imminent risk of death, serious illness, serious injury or serious damage to the environment; 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 thing.
- (3) The thing may be returned under subsection (2) either unconditionally or on such terms and conditions as the Secretary sees fit.

57 Magistrate may permit a thing 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 purposes of an investigation as to whether an offence against this Act has been committed; or
 - (b) to enable evidence of an offence against this Act to be secured for the purposes of a prosecution;

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the magistrate may order that an inspector may retain the thing for a period (not being a period 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.

58 Disposal of goods if there is no owner or owner cannot be located

If:

- (a) a thing is seized under this Part; and
- (b) apart from this section, the Commonwealth is required to return the thing to the owner; and
- (c) there is no owner or the Secretary cannot, despite making reasonable efforts, locate the owner;

the Secretary may dispose of the thing in such manner as he or she thinks appropriate.

Division 8—Warrants

59 Monitoring warrants

Application for warrant

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

Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more inspectors should have access to the premises for the purposes of:
 - (a) finding out whether this Act has been complied with; or
 - (b) assessing the correctness of information provided under this Act.
- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
 - (a) authorise one or more inspectors (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 41 in relation to the premises; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

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- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

60 Offence-related warrants

Application for warrant

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

Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath, 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 warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
 - (a) 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 powers set out in section 44; and
 - (iii) to seize the evidential material; 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.

61 Offence-related warrants by telephone, telex, fax etc.

Application for 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 a warrant under section 60 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 warrant, the inspector must prepare an information of the kind mentioned in subsection 60(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 warrant before the information is sworn.

Issue of 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 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 60 if the application had been made under that section.

Obligations of magistrate and inspector once warrant issued

- (6) If the magistrate completes and signs the 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

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- (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 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 warrant, whichever is the earlier, send to the magistrate:
- (a) the form of 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 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 60.

Authority of warrant

- (9) A form of 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
 - (b) the 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.

62 Offences relating to warrants

- (1) An inspector must not make, in an application for a warrant, a statement that the inspector knows to be false or misleading in a material particular.

Maximum penalty: Imprisonment for 2 years.

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

- (2) An inspector must not:
- (a) state in a document that purports to be a form of warrant under section 61 the name of a magistrate unless that magistrate issued the warrant; or
 - (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the form authorised by the magistrate; or
 - (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
 - (d) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Maximum penalty: Imprisonment for 2 years.

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

Division 9—Powers of magistrates

63 Powers conferred on magistrates in their personal capacity

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (2) The magistrate need not accept the power conferred.

64 Immunity of magistrates

A magistrate exercising a power mentioned in subsection 63(1) has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Division 10—Injunctions

65 Injunctions

Grant of injunction

- (1) If a person has engaged, is engaging, or is about to engage in any conduct that is or would be an offence against this Act, the Federal Court of Australia (the *Court*) may, on the application of the Minister or any other aggrieved person, grant an injunction restraining the person from engaging in the conduct.
- (2) If:
- (a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and
 - (b) the refusal or failure is, or would be, an offence against this Act;
- the Court may, on the application of the Minister or any other aggrieved person, grant an injunction requiring the person to do the thing.
- (2A) An individual is taken to be a person aggrieved by the conduct, refusal or failure mentioned in subsection (1) or (2) if:
- (a) the individual is an Australian citizen or ordinarily resident in Australia; and
 - (b) at any time in the 2 years immediately before the conduct, refusal or failure, the individual has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment.
- (2B) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the conduct, refusal or failure mentioned in subsection (1) or (2) if:
- (a) the organisation or association is incorporated, or was otherwise established, in Australia; and
 - (b) at any time in the 2 years immediately before the conduct, refusal or failure, the organisation or association has engaged

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in a series of activities in Australia for protection or conservation of, or research into, the environment; and

- (c) at the time of the conduct, refusal or failure, the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.
- (2C) To avoid doubt, subsections (2A) and (2B) extend the meaning of the term *aggrieved person* for the purposes of an application to the Court under this section.
- (3) The power of the Court to grant an injunction may be exercised:
- (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind.

Discharge or variation of injunction

- (4) The Court may discharge or vary an injunction granted under this section.

Interim injunction

- (5) The Court may grant an interim injunction pending a determination of an application under subsection (1).

Other powers

- (6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Court.

Part 4—Record keeping and reporting obligations

66 Record keeping

- (1) If:
- (a) a person supplies fuel in Australia that is the subject of a fuel standard; and
 - (b) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce;
- the person must keep and maintain records in relation to such supplies in accordance with the regulations.

Maximum penalty: 60 penalty units.

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

- (2) This offence is one of strict liability.

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

67 Annual statements

Producers

- (1) If:
- (a) a person produces and supplies fuel in Australia during a calendar year; and
 - (b) the fuel is the subject of a fuel standard; and
 - (c) the person is a constitutional corporation or a Commonwealth entity or the person supplies the fuel in the course of constitutional trade or commerce;
- the person must provide an annual statement for the year.

Importers

- (2) If:

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- (a) a person imports fuel into Australia, and supplies the fuel in Australia, during a calendar year; and
 - (b) the fuel is the subject of a fuel standard;
- the person must provide an annual statement for the year.

When statement to be provided

- (3) The statement must be provided on or before:
 - (a) 14 February in the following year; or
 - (b) any later day allowed by the Secretary.

Content of statement

- (4) The statement must:
 - (a) be in a form (which may be an electronic form) approved by the Secretary; and
 - (b) contain any information required by the Secretary; and
 - (c) be provided to the Secretary in accordance with the regulations.

Offence

- (5) A person is guilty of an offence if the person contravenes a requirement of this section.

Maximum penalty: 60 penalty units.

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

- (6) This offence is one of strict liability.

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

Part 5—Other matters

68 Delegation by Minister

- (1) The Minister may, in writing, delegate to the Secretary, an SES employee or an acting SES employee all or any of the Minister's powers or functions under this Act, other than the following:
 - (a) granting an approval under section 13;
 - (b) making a determination under section 21.
- (2) The delegate must, in exercising powers or functions under the delegation, comply with any directions of the Minister.

69 Delegation by Secretary

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

70 Review of decisions

- (1) An application may be made to the Administrative Review Tribunal for review of the following decisions under this Act:
 - (a) a decision to refuse to grant an approval;
 - (b) a decision to grant an approval that is different from the approval applied for;
 - (c) a decision to specify a condition in an approval;
 - (d) a decision to vary or revoke an approval;
 - (e) a decision to enter, or not to enter, a fuel additive, or a class of fuel additives, in the Register;
 - (f) a decision to remove, or not to remove, a fuel additive, or a class of fuel additives, from the Register.

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- (2) For the purposes of an application to the Administrative Review Tribunal under this section, the meaning of the term *person whose interests are affected* in section 61 of the Act that establishes the Administrative Review Tribunal is extended by subsections (3) and (4) of this section.
- (3) An individual is taken to be a person whose interests are affected by a decision mentioned in subsection (1) if:
 - (a) the individual is an Australian citizen or ordinarily resident in Australia; and
 - (b) at any time in the 2 years immediately before the decision mentioned in subsection (1), the individual has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment.
- (4) An organisation or association (whether incorporated or not) is taken to be a person whose interests are affected by a decision mentioned in subsection (1) if:
 - (a) the organisation or association is incorporated, or was otherwise established, in Australia; and
 - (b) at any time in the 2 years immediately before the decision mentioned in subsection (1), the organisation or association has engaged in a series of activities in Australia for protection or conservation of, or research into, the environment; and
 - (c) at the time of the decision mentioned in subsection (1), the objects or purposes of the organisation or association included protection or conservation of, or research into, the environment.

71 Annual report

- (1) The Secretary must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the operation of this Act during the year.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

72 Review of operation of Act

Undertaking the review

- (1) The Minister must cause an independent review of the operation of this Act to be undertaken as soon as possible after the second anniversary of the commencement of Part 2 of this Act and afterwards at intervals of not longer than 5 years.

Report to Minister

- (2) The persons who undertake such a review must give the Minister a written report of the review.

Tabling of report

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

Definition

- (4) In this section:

independent review means a review undertaken by persons who:

- (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
- (b) include one or more persons who are not APS employees.

73 Regulations

The Governor-General may make regulations prescribing matters:

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

*[Minister's second reading speech made in—
Senate on 7 September 2000
House of Representatives on 28 November 2000]*

(157/00)