



# **Regulatory Powers (Standardisation Reform) Act 2021**

**No. 32, 2021**

**An Act to amend the *Regulatory Powers (Standard Provisions) Act 2014* and to apply that Act to various Commonwealth Acts, 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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# Regulatory Powers (Standardisation Reform) Act 2021

No. 32, 2021

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**An Act to amend the *Regulatory Powers (Standard Provisions) Act 2014* and to apply that Act to various Commonwealth Acts, and for related purposes**

[Assented to 26 March 2021]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Regulatory Powers (Standardisation Reform) Act 2021*.

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 March 2021
2. Schedule 1	The day after this Act receives the Royal Assent.	27 March 2021
3. Schedule 2, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 September 2021
4. Schedule 2, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 3; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	26 September 2021 (paragraph (a) applies)
5. Schedule 3, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 September 2021



<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 3, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 5; and (b) immediately after the commencement of Part 1 of Schedule 1 to the <i>National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act 2020</i> .	26 September 2021 (paragraph (a) applies)
7. Schedule 3, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 5; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	26 September 2021 (paragraph (a) applies)
8. Schedule 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 September 2021
9. Schedule 5, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 September 2021
10. Schedule 5, item 23	The later of: (a) immediately after the commencement of the provisions covered by table item 9; and (b) immediately after the commencement of	26 September 2021 (paragraph (a) applies)

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p> <p>However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
11. Schedule 5, item 24	<p>Immediately after the commencement of the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p> <p>However, the provision does not commence at all if the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i> commences before the day on which the provisions covered by table item 9 commence.</p>	Never commenced
12. Schedule 5, item 25	<p>The later of:</p> <p>(a) immediately after the commencement of the provisions covered by table item 9; and</p> <p>(b) immediately after the commencement of the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p> <p>However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur.</p>	26 September 2021 (paragraph (a) applies)
13. Schedule 5, items 26 and 27	<p>Immediately after the commencement of the provisions covered by table item 9.</p> <p>However, the provisions do not commence at all if the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i> commences before the day on which the provisions covered by table item 9 commence.</p>	Never commenced
14. Schedule 5, item 28	<p>Immediately after the commencement of the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p>	Never commenced

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p>However, the provision does not commence at all if the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i> commences before the day on which the provisions covered by table item 9 commence.</p>	
15. Schedule 5, items 29 to 36	<p>The later of:</p> <p>(a) immediately after the commencement of the provisions covered by table item 9; and</p> <p>(b) immediately after the commencement of the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	<p>26 September 2021</p> <p>(paragraph (a) applies)</p>
16. Schedule 5, item 37	<p>Immediately after the commencement of the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p> <p>However, the provision does not commence at all if the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i> commences before the day on which the provisions covered by table item 9 commence.</p>	<p>Never commenced</p>
17. Schedule 5, items 38 to 43	<p>The later of:</p> <p>(a) immediately after the commencement of the provisions covered by table item 9; and</p> <p>(b) immediately after the commencement of the <i>Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020</i>.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	<p>26 September 2021</p> <p>(paragraph (a) applies)</p>

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
18. Schedule 5, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 9; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	26 September 2021  (paragraph (a) applies)
19. Schedule 6, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 September 2021
20. Schedule 6, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 19; and (b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	26 September 2021  (paragraph (a) applies)
21. Schedule 7, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 September 2021
22. Schedule 7, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 21; and	26 September 2021  (paragraph (a) applies)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	(b) immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

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 Schedules

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

## Schedule 1—Amendment of the Regulatory Powers (Standard Provisions) Act 2014

### *Regulatory Powers (Standard Provisions) Act 2014*

#### 1 Section 3

After:

- |   |
|---|
| (b) monitoring whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct; |
|---|

insert:

- |   |
|---|
| (ba) monitoring other matters to which an Act or legislative instruments relates; |
|---|

#### 2 Section 4 (at the end of the definition of *subject to monitoring*)

Add:

- ; and (c) in relation to a matter to which an Act or a legislative instrument relates—has the meaning given by section 9A.

#### 3 Section 6

Omit:

This Part creates a framework for monitoring whether the provisions of an Act or a legislative instrument have been, or are being, complied with.
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It also creates a framework for monitoring whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct.
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For this Part to operate, a provision or information must be made subject to monitoring under this Part. This is to be done by another Act.
---

substitute:

This Part creates a framework for:

- (a) monitoring whether provisions of an Act or a legislative instrument have been, or are being, complied with; and
- (b) monitoring whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct; and
- (c) monitoring other matters to which an Act or a legislative instrument relates.

For this Part to operate, a provision, information or a matter must be made subject to monitoring under this Part. This is to be done by another Act.

#### **4 Section 7**

Repeal the section, substitute:

#### **7 Purpose and operation of this Part**

- (1) The principal purpose of this Part is to create a framework for monitoring:
  - (a) whether provisions of an Act or a legislative instrument have been, or are being, complied with; and
  - (b) whether information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument is correct; and
  - (c) other matters to which an Act or a legislative instrument relates.
- (2) However, for this Part to operate, one or more of the following must apply:
  - (a) a provision of an Act or a legislative instrument must be made subject to monitoring under this Part;
  - (b) information given in compliance, or purported compliance, with a provision of an Act or a legislative instrument must be made subject to monitoring under this Part;
  - (c) a matter to which an Act or a legislative instrument relates must be made subject to monitoring under this Part.

## 5 After section 9

Insert:

### 9A Matters subject to monitoring

A matter to which an Act or a legislative instrument relates is ***subject to monitoring*** under this Act if an Act provides that the matter is subject to monitoring.

## 6 At the end of section 10

Add:

- (3) A provision is ***related*** to a matter that is subject to monitoring under this Part if an Act provides that the provision is related to the matter.

## 7 Subsection 11(1)

Repeal the subsection, substitute:

- (1) A person is an ***authorised applicant*** for the purposes of exercising powers under this Part to determine:
  - (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part;if an Act provides that the person is an authorised applicant in relation to that provision, information or matter for the purposes of this Part.

## 8 Subsection 11(3)

Omit “a provision or information”, substitute “a provision, information or a matter”.

## 9 Paragraphs 11(3)(a) and (b)

Omit “provision or information”, substitute “provision, information or matter”.



## **10 Subsection 12(1)**

Repeal the subsection, substitute:

- (1) A person is an **authorised person** for the purposes of exercising powers under this Part to determine:
- (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part;
- if an Act provides that the person is an authorised person in relation to that provision, information or matter for the purposes of this Part.

## **11 Subsection 12(3)**

Omit “a provision or information”, substitute “a provision, information or a matter”.

## **12 Paragraphs 12(3)(a) and (b)**

Omit “provision or information”, substitute “provision, information or matter”.

## **13 Section 13**

Repeal the section, substitute:

## **13 Identity card**

**Identity card**, in relation to a person who is an authorised person in relation to a provision, information or a matter for the purposes of this Part, means a card issued to the person under section 35 by the relevant chief executive in relation to that provision, information or matter.

## **14 Subsection 14(1)**

Repeal the subsection, substitute:

- (1) A judicial officer is an **issuing officer** for the purposes of exercising powers under this Part to determine:

- (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part;
- if an Act provides that the judicial officer is an issuing officer in relation to that provision, information or matter for the purposes of this Part.

**15 Subsection 14(3)**

Omit “a provision or information”, substitute “a provision, information or a matter”.

**16 Paragraphs 14(3)(a) and (b)**

Omit “provision or information”, substitute “provision, information or matter”.

**17 Subsection 15(1)**

Repeal the subsection, substitute:

- (1) A person is the *relevant chief executive* for the purposes of exercising powers under this Part that relate to an authorised person in relation to a provision, information or a matter for the purposes of this Part, if an Act provides that the person is the relevant chief executive for the purposes of this Part in relation to the provision, information or matter.

**18 Subsection 15(3)**

Omit “a provision or information”, substitute “a provision, information or a matter”.

**19 Paragraphs 15(3)(a) and (b)**

Omit “provision or information”, substitute “provision, information or matter”.

**20 Section 16**

Repeal the section, substitute:

## **16 Relevant court**

A court is a *relevant court* in relation to a matter that arises because of:

- (a) the exercise of powers by a person under this Part to determine:
  - (i) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
  - (ii) whether information subject to monitoring under this Part is correct; or
  - (iii) a matter subject to monitoring under this Part; or
- (b) the exercise of powers, or the performance of functions or duties, under this Part that are incidental to the powers mentioned in paragraph (a);

if an Act provides that the court is a relevant court in relation to that provision, information or matter for the purposes of this Part.

## **21 Subsection 18(1)**

Omit “either or both”, substitute “one or more”.

## **22 At the end of subsection 18(1)**

Add:

; (c) determining a matter subject to monitoring under this Part.

## **23 Subsection 20(3)**

Repeal the subsection, substitute:

- (3) *Relevant data* means information relevant to determining:
  - (a) whether a provision that is subject to monitoring under this Part has been, or is being, complied with; or
  - (b) whether information subject to monitoring under this Part is correct; or
  - (c) a matter subject to monitoring under this Part.

## **24 Subparagraph 22(1)(b)(iv)**

Repeal the subparagraph, substitute:

- (iv) the thing affords evidence that information subject to monitoring under this Part, or information given in

- compliance or purported compliance with a related provision, is not correct; or
- (v) the thing affords evidence in relation to a matter that is subject to monitoring under this Part, or in relation to compliance or purported compliance with a provision that is related to the matter; and

## **25 Paragraph 23(2)(b)**

Repeal the paragraph, substitute:

- (b) may exercise powers under this Part for the purposes of assisting the authorised person to determine:
- (i) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
- (ii) whether information subject to monitoring under this Part is correct; or
- (iii) a matter subject to monitoring under this Part; and

## **26 Subsection 24(1)**

Repeal the subsection (not including the heading), substitute:

- (1) This section applies if an authorised person enters premises for the purposes of determining:
- (a) whether a provision subject to monitoring under this Part has been, or is being, complied with; or
- (b) whether information subject to monitoring under this Part is correct; or
- (c) a matter subject to monitoring under this Part.

## **27 At the end of subsections 24(2) and (3)**

Add:

- ; or (c) the matter.

## **28 Subsection 32(2)**

Repeal the subsection (not including the heading), substitute:

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised persons should have access to the premises for the purposes of determining:

- (a) whether a provision that is subject to monitoring under this Part has been, or is being, complied with; or
- (b) whether information subject to monitoring under this Part is correct; or
- (c) a matter subject to monitoring under this Part.

**29 Subsection 38(1)**

Omit “offence against”, substitute “offence provision of”.

**30 Subsection 38(1)**

After “offence” (second occurring), insert “provision”.

**31 Subsection 41(1)**

After “in relation to” (second occurring), insert “the”.

**32 Section 98 (paragraph beginning “A person can”)**

After “strict liability offence”, insert “provision”.

**33 Section 100**

Repeal the section, substitute:

**100 Provisions subject to infringement notices**

- (1) A provision of an Act or a legislative instrument, contravention of which constitutes an offence of strict liability, is ***subject to an infringement notice*** under this Part if an Act provides that the provision is subject to an infringement notice under this Part.
- (2) A civil penalty provision of an Act or a legislative instrument is ***subject to an infringement notice*** under this Part if an Act provides that the provision is subject to an infringement notice under this Part.

**34 Subsection 103(5)**

Repeal the subsection, substitute:

- (5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence

provision, the infringement notice must relate to the alleged contravention of the offence provision.

### **35 Subparagraphs 104(1)(h)(i) to (iii)**

Repeal the subparagraphs, substitute:

- (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
- (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

### **36 Subparagraphs 104(1)(k)(i) to (iii)**

Repeal the subparagraphs, substitute:

- (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
- (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

### **37 Subparagraphs 104(1)(m)(i) to (iii)**

Repeal the subparagraphs, substitute:

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- (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
- (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

### **38 Subparagraphs 106(4)(e)(i) to (iii)**

Repeal the subparagraphs, substitute:

- (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
- (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

### **39 Paragraphs 107(1)(b) to (d)**

Repeal the paragraphs, substitute:

- (b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; and

- (c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; and
- (d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

**40 Paragraph 107(1)(f)**

Repeal the paragraph, substitute:

- (f) if the alleged contravention is of an offence provision—the person is not regarded as having been convicted of the offence.



## **Schedule 2—Amendment of the Defence Force Discipline Act 1982**

### **Part 1—Main amendments**

#### **Division 1—Amendments**

##### *Defence Force Discipline Act 1982*

###### **1 Subsection 3(1)**

Insert:

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

###### **2 After Division 6 of Part VI**

Insert:

#### **Division 6A—Investigation under the Regulatory Powers Act**

##### **101ZAA Simplified outline of this Division**

- The Regulatory Powers Act is triggered to allow appointed members of the Australian Defence Force or APS employees in the Department to enter premises under an investigation warrant or with consent of the occupier and to exercise investigation powers under that Act for the purposes of gathering material relating to the contravention of service offences.

### **101ZAB Basic investigation powers under Part 3 of the Regulatory Powers Act**

#### *Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is a service offence.

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 that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1), there are no related provisions.

#### *Authorised applicant*

- (3) For the purposes of Part 3 of the Regulatory Powers Act, a person appointed under subsection 101ZAD(1) is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

#### *Authorised person*

- (4) For the purposes of Part 3 of the Regulatory Powers Act, a person appointed under subsection 101ZAD(2) is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

#### *Issuing officer*

- (5) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) if a Judge of the Federal Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
  - (b) if a Judge of the Federal Circuit Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;
  - (c) a magistrate.

*Relevant chief executive*

- (6) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is a relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Chief of the Defence Force;
  - (b) the Inspector-General of the Australian Defence Force.
- (7) A relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (8) to:
- (a) an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, in the Department; or
  - (b) an officer of the Navy who holds the rank of Commander or a higher rank; or
  - (c) an officer of the Army who holds the rank of Lieutenant-Colonel or a higher rank; or
  - (d) an officer of the Air Force who holds the rank of Wing Commander or a higher rank.
- (8) The powers and functions that may be delegated are:
- (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the relevant chief executive.

*Relevant court*

- (10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Person assisting*

- (11) 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 a provision mentioned in subsection (1).

*Use of force in executing an investigation warrant*

- (12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

*Extension to external Territories*

- (13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

**101ZAC Modifications of Part 3 of the Regulatory Powers Act**

*Additional investigation power*

- (1) The additional power mentioned in subsection (2) is taken to be included in the investigation powers under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 101ZAB(1).
- (2) The additional investigation power is the power of an authorised person to be accompanied by, and to make use of, an animal to assist the person in entering premises, or in exercising powers, under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection 101ZAB(1).

Note: Under subsection 101ZAB(4), a person appointed under subsection 101ZAD(2) is an authorised person.

- (3) Subsection (2) does not apply in relation to the entry of premises under an investigation warrant unless the use of the animal by the authorised person is authorised by the warrant.

*Investigation warrant must deal with use of animals*

- (4) Subsection 70(4) of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 101ZAB(1) of this Act as if subsection 70(4) of the Regulatory Powers Act also required the warrant:
- (a) to state whether authorised persons named in the warrant are authorised to be accompanied by, and to make use of, an animal; and
  - (b) if they are authorised, to specify the kind of animal.

**101ZAD Appointment of persons under this Division**

*Authorised applicants*

- (1) The Chief of the Defence Force (the **appointer**), or the Inspector-General of the Australian Defence Force (the **appointer**), may, in writing, appoint the following to be an authorised applicant for the purposes of this Division:
- (a) a specified member of the Australian Defence Force;
  - (b) a specified APS employee in the Department;
  - (c) each member of the Australian Defence Force included in a specified class of members of the Australian Defence Force;
  - (d) each APS employee in the Department included in a specified class of APS employee in the Department.

*Authorised persons*

- (2) The appointer may, in writing, appoint the following to be an authorised person for the purposes of this Division:
- (a) a specified member of the Australian Defence Force;
  - (b) a specified APS employee in the Department;
  - (c) each member of the Australian Defence Force included in a specified class of members of the Australian Defence Force;
  - (d) each APS employee in the Department included in a specified class of APS employee in the Department.

*Appointees to have suitable qualifications, training or experience*

- (3) The appointer must not appoint a particular member of the Australian Defence Force under paragraph (1)(a) or (2)(a), or a particular APS employee in the Department under paragraph (1)(b) or (2)(b), unless the appointer is satisfied that the member or employee has suitable qualifications, training or experience.
- (4) The appointer must not specify a class of members of the Australian Defence Force under paragraph (1)(c) or (2)(c), or a class of APS employees in the Department under paragraph (1)(d) or (2)(d), unless the appointer is satisfied that members or employees of that class have suitable qualifications, training or experience.

**101ZAE No limit on other powers**

This Division does not limit a person's powers under any other provision of this Act.

**Division 2—Application provision**

**3 Application provision—investigation**

Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 6A of Part VI of the *Defence Force Discipline Act 1982*, applies in relation to evidential material that relates to a provision mentioned in subsection 101ZAB(1) of the *Defence Force Discipline Act 1982*, if the suspected contravention of the provision occurred before, on or after the commencement of this Part.

## **Part 2—Amendments relating to the Federal Circuit and Family Court of Australia Act 2021**

### *Defence Force Discipline Act 1982*

#### **4 Paragraph 101ZAB(5)(b)**

Omit “a Judge of the Federal Circuit Court of Australia”, substitute “a Judge of the Federal Circuit and Family Court of Australia (Division 2)”.

#### **5 Paragraph 101ZAB(10)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

## **Schedule 3—Amendment of the Education Services for Overseas Students Act 2000**

### **Part 1—Main amendments**

#### **Division 1—Amendments**

#### *Education Services for Overseas Students Act 2000*

##### **1 Section 5**

Repeal the following definitions:

- (a) definition of *evidential material*;
- (b) definition of *monitoring warrant*;
- (c) definition of *occupier*.

##### **2 Section 5**

Insert:

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

##### **3 Section 5 (definition of search warrant)**

Repeal the definition.

##### **4 Part 6 (heading)**

Repeal the heading, substitute:

### **Part 6—Conditions, suspension and cancellation etc.**

##### **5 Section 83A**

Omit:



- The ESOS agency for a registered provider may accept a written undertaking under Division 4 relating to the provider's compliance with a provision of this Act, the national code, the ELICOS Standards, the Foundation Program Standards or a condition of the provider's registration. The ESOS agency may apply to a court to enforce the undertaking.

## **6 Section 106**

Repeal the section.

## **7 Division 4 of Part 6**

Repeal the Division.

## **8 Part 7 (heading)**

Repeal the heading, substitute:

# **Part 7—Monitoring, investigation and enforcement**

## **9 Section 111A**

Repeal the section, substitute:

### **111A Guide to this Part**

- The ESOS agency for a registered provider can give a production notice (requiring a person to give information or documents) or an attendance notice (requiring a person to attend and answer questions) under Division 2. The TPS Director may also give a production notice under that Division.
- This Part also applies Parts 2, 3, 5 and 6 of the Regulatory Powers Act. Those Parts deal with monitoring, investigation, infringement notices and enforceable undertakings.

## **10 Division 1 of Part 7**

Repeal the Division.

## **11 At the end of section 129**

Add:

*Power conferred personally*

- (3) The power in subsection (1) conferred on a magistrate is conferred on the magistrate:
- (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

*Power need not be accepted*

- (4) A magistrate need not accept the power conferred by subsection (1).

*Protection and immunity*

- (5) A magistrate exercising a power conferred by subsection (1) has the same protection and immunity as if the magistrate were exercising the power:
- (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

## **12 Divisions 3 to 5 of Part 7**

Repeal the Divisions, substitute:

### **Division 3—Monitoring**

#### **130 Monitoring powers**

*Provisions subject to monitoring*

- (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) a provision of the national code; or
  - (c) a provision of the ELICOS Standards or Foundation Program Standards; or

- (d) 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.

*Information subject to monitoring*

- (2) Information given in compliance or purported compliance with one or more of the following provisions is subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) a provision of this Act;
  - (b) a provision of the national code;
  - (c) a provision of the ELICOS Standards or Foundation Program Standards.

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.

*Matter subject to monitoring*

- (3) A matter is subject to monitoring under Part 2 of the Regulatory Powers Act if it is determining whether a registered provider, because of financial difficulty or any other reason, might not be able to:
- (a) provide courses to its accepted students; or
  - (b) refund amounts to its accepted students under Division 2 of Part 5 of this Act.

*Related provisions*

- (4) For the purposes of Part 2 of the Regulatory Powers Act:
- (a) a provision covered by subsection 115(1) of the TEQSA Act is related to the provisions mentioned in subsection (1) of this section; and
  - (b) a provision covered by subsection 115(2) of the TEQSA Act is related to the information mentioned in subsection (2) of this section.

*Authorised applicant*

- (5) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised applicant in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

*Authorised person*

- (6) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised person in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

*Issuing officer*

- (7) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

*Relevant chief executive*

- (8) For the purposes of Part 2 of the Regulatory Powers Act, the relevant chief executive in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3) is:
- (a) to the extent that Part relates to an authorised person who is an authorised officer of TEQSA—the Chief Executive Officer of TEQSA; or
  - (b) to the extent that Part relates to an authorised person who is an authorised officer of the National VET Regulator—the Chief Executive Officer of the National VET Regulator; or
  - (c) to the extent that Part relates to an authorised person who is an authorised officer of the Secretary—the Secretary; or
  - (d) to the extent that Part relates to an authorised person who is an authorised officer of any other entity—the head (however described) of that entity.

- (9) The relevant chief executive covered by paragraph (8)(a), (b) or (c) may, in writing, delegate the powers and functions mentioned in subsection (10) to:
- (a) for the Chief Executive Officer of TEQSA—a member of the staff of TEQSA (within the meaning of the TEQSA Act) who is:
    - (i) an SES employee or an acting SES employee; or
    - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  - (b) for the Chief Executive Officer of the National VET Regulator—a member of the staff of the Regulator (within the meaning of the NVETR Act) who is:
    - (i) an SES employee or an acting SES employee; or
    - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  - (c) for the Secretary—an SES employee, or an acting SES employee, in the Department.
- (10) The powers and functions that may be delegated are:
- (a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (11) A person exercising powers or performing functions under a delegation under subsection (9) must comply with any directions of the relevant chief executive.

*Relevant court*

- (12) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3):
- (a) the Federal Court of Australia;

(b) the Federal Circuit Court of Australia.

*Person assisting*

- (13) 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 the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3).

*Use of force in executing a monitoring warrant*

- (14) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

*Extension to external Territories*

- (15) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), the information mentioned in subsection (2) and the matter mentioned in subsection (3), extends to each external Territory mentioned in subsection 4B(1) of this Act.

## **Division 4—Investigation**

### **131 Investigation powers**

*Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
  - (b) 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.

*Related provisions*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):
- (a) an offence against the TEQSA Act;
  - (b) a civil penalty provision of the TEQSA Act;
  - (c) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to the TEQSA Act.

*Authorised applicant*

- (3) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

*Authorised person*

- (4) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

*Issuing officer*

- (5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

*Relevant chief executive*

- (6) For the purposes of Part 3 of the Regulatory Powers Act, the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1) is:
- (a) to the extent that Part relates to an authorised person who is an authorised officer of TEQSA—the Chief Executive Officer of TEQSA; or

- (b) to the extent that Part relates to an authorised person who is an authorised officer of the National VET Regulator—the Chief Executive Officer of the National VET Regulator; or
  - (c) to the extent that Part relates to an authorised person who is an authorised officer of the Secretary—the Secretary; or
  - (d) to the extent that Part relates to an authorised person who is an authorised officer of any other entity—the head (however described) of that entity.
- (7) The relevant chief executive covered by paragraph (6)(a), (b) or (c) may, in writing, delegate the powers and functions mentioned in subsection (8) to:
- (a) for the Chief Executive Officer of TEQSA—a member of the staff of TEQSA (within the meaning of the TEQSA Act) who is:
    - (i) an SES employee or an acting SES employee; or
    - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  - (b) for the Chief Executive Officer of the National VET Regulator—a member of the staff of the Regulator (within the meaning of the NVETR Act) who is:
    - (i) an SES employee or an acting SES employee; or
    - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  - (c) for the Secretary—an SES employee, or an acting SES employee, in the Department.
- (8) The powers and functions that may be delegated are:
- (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the relevant chief executive.



*Relevant court*

- (10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Person assisting*

- (11) 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 a provision mentioned in subsection (1).

*Use of force in executing an investigation warrant*

- (12) In executing an investigation warrant under Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

*Extension to external Territories*

- (13) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to each external Territory mentioned in subsection 4B(1) of this Act.

## **Division 5—Infringement notices**

### **132 Infringement notices**

*Provisions subject to an infringement notice*

- (1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) subsection 19(5);

- (b) subsection 20(6);
- (c) subsection 21(5);
- (d) subsection 21A(1A);
- (e) subsection 46E(1);
- (f) subsection 47F(1);
- (g) subsection 47G(1).

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

*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an authorised officer of the ESOS agency for a registered provider is an infringement officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the relevant chief executive in relation to the provisions mentioned in subsection (1) is:
  - (a) to the extent that Part relates to an infringement officer who is an authorised officer of TEQSA—the Chief Executive Officer of TEQSA; or
  - (b) to the extent that Part relates to an infringement officer who is an authorised officer of the National VET Regulator—the Chief Executive Officer of the National VET Regulator; or
  - (c) to the extent that Part relates to an infringement officer who is an authorised officer of the Secretary—the Secretary; or
  - (d) to the extent that Part relates to an infringement officer who is an authorised officer of any other entity—the head (however described) of that entity.
- (4) The relevant chief executive covered by paragraph (3)(a), (b) or (c) may, in writing, delegate the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) to:
  - (a) for the Chief Executive Officer of TEQSA—a member of the staff of TEQSA (within the meaning of the TEQSA Act) who is:

- (i) an SES employee or an acting SES employee; or
    - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  - (b) for the Chief Executive Officer of the National VET Regulator—a member of the staff of the Regulator (within the meaning of the NVETR Act) who is:
    - (i) an SES employee or an acting SES employee; or
    - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
  - (c) for the Secretary—an SES employee, or an acting SES employee, in the Department.
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

*Extension to external Territories*

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to each external Territory mentioned in subsection 4B(1) of this Act.

## **Division 6—Enforceable undertakings**

### **133 Enforceable undertakings**

*Enforceable provisions*

- (1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:
- (a) a provision of this Act; or
  - (b) a provision of the national code; or
  - (c) a provision of the ELICOS Standards or Foundation Program Standards.

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

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, an authorised person in relation to the provisions mentioned in subsection (1) is:
- (a) in relation to an undertaking by a registered higher education provider—the Chief Executive Officer of TEQSA; or
  - (b) in relation to an undertaking by a registered VET provider—the Chief Executive Officer of the National VET Regulator; or
  - (c) in relation to an undertaking by an approved school provider—the Secretary; or
  - (d) in relation to an undertaking by any other registered provider—the head (however described) of the ESOS agency for the registered provider.

*Relevant court*

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Other undertakings*

- (4) An authorised person covered by subsection (2) may accept a written undertaking given by a registered provider that:
- (a) the provider will take, or refrain from taking, specified action in order for the provider to comply with a condition of the provider's registration; or
  - (b) the provider will take specified action directed towards ensuring that in the future the provider does not, or is unlikely to, contravene a condition of the provider's registration.

The undertaking must be expressed to be an undertaking under this subsection.

- (5) The power in subsection (4) is in addition to the power of an authorised person under subsection 114(1) of the Regulatory Powers Act.

- (6) Part 6 of the Regulatory Powers Act, other than subsections 114(1) and (2) of that Act, applies to an undertaking accepted under subsection (4) of this section as if it were an undertaking accepted under subsection 114(1) of the Regulatory Powers Act.

*Extension to external Territories*

- (7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and an undertaking accepted under subsection (4), extends to each external Territory mentioned in subsection 4B(1) of this Act.

## **Division 2—Application and saving provisions**

### **13 Saving provision—identity cards**

Despite the repeal of section 162 of the *Education Services for Overseas Students Act 2000* made by this Part, that section, as in force immediately before the commencement of this Part, continues to apply on and after that commencement in relation to a person who ceased to be an authorised officer of the ESOS agency for a registered provider before that commencement.

### **14 Application and saving provisions—monitoring**

- (1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 7 of the *Education Services for Overseas Students Act 2000*, applies in relation to:
- (a) determining whether a provision mentioned in subsection 130(1) of the *Education Services for Overseas Students Act 2000* has been complied with before, on or after the commencement of this Part; or
  - (b) determining whether information given in compliance, or purported compliance, with a provision mentioned in subsection 130(2) of the *Education Services for Overseas Students Act 2000* before, on or after the commencement of this Part is correct; or
  - (c) determining a matter mentioned in subsection 130(3) of the *Education Services for Overseas Students Act 2000* on or after the commencement of this Part.

- (2) Divisions 3 and 5 of Part 7 of the *Education Services for Overseas Students Act 2000*, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to the following:
- (a) an application for a monitoring warrant made, but not decided, under section 137 or 164 of that Act before that commencement;
  - (b) a monitoring warrant issued under section 138 or subsection 165(2) of that Act before, on or after that commencement as a result of an application made before that commencement;
  - (c) powers exercised, rights created and duties imposed under those Divisions before, on or after that commencement as a result of:
    - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
    - (ii) an entry onto premises before, on or after that commencement as a result of a monitoring warrant referred to in paragraph (b);
  - (d) things secured or seized under those Divisions before, on or after that commencement;
  - (e) a requirement made under section 133 of that Act before, on or after that commencement.

## **15 Application and saving provisions—investigation**

- (1) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 7 of the *Education Services for Overseas Students Act 2000*, applies in relation to evidential material that relates to a provision mentioned in subsection 131(1) of the *Education Services for Overseas Students Act 2000*, if the suspected contravention of the provision occurred before, on or after the commencement of this Part.
- (2) Divisions 4 and 5 of Part 7 of the *Education Services for Overseas Students Act 2000*, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to the following:
-

- (a) an application for a search warrant made, but not decided, under section 143 or section 164 of that Act before that commencement;
- (b) a search warrant issued under section 144 or subsection 165(3) of that Act before, on or after that commencement as a result of an application made before that commencement;
- (c) powers exercised, rights created and duties imposed under those Divisions before, on or after that commencement as a result of:
  - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
  - (ii) an entry onto premises before, on or after that commencement as a result of a search warrant referred to in paragraph (b);
- (d) things secured or seized under those Divisions before, on or after that commencement.

## **16 Application and saving provisions—infringement notices**

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 7 of the *Education Services for Overseas Students Act 2000*, applies in relation to alleged contraventions of provisions referred to in subsection 132(1) of the *Education Services for Overseas Students Act 2000* occurring on or after the commencement of this Part.
- (2) Section 106 of the *Education Services for Overseas Students Act 2000* and the regulations made for the purposes of that section, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to alleged contraventions of provisions referred to in subsection 106(1A) of that Act occurring before that commencement.

## **17 Application and saving provisions—enforceable undertakings**

- (1) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 6 of Part 7 of the *Education Services for Overseas Students Act 2000*, applies in relation to undertakings given on or after the commencement of this Part.

- (2) Division 4 of Part 6 of the *Education Services for Overseas Students Act 2000*, as in force immediately before the commencement of this Part, continues to apply on and after that commencement in relation to the following:
- (a) an undertaking given under section 110A of that Act before that commencement;
  - (b) an application for an order made, but not decided, under subsection 110B(1) of that Act before that commencement;
  - (c) an order made under subsection 110B(2) of that Act before, on or after that commencement as a result of an application made before that commencement.



**Part 2—Amendments relating to the National  
Vocational Education and Training  
Regulator Amendment (Governance and  
Other Matters) Act 2020**

*Education Services for Overseas Students Act 2000*

**18 Paragraphs 130(8)(b) and (9)(b)**

Omit “Chief Executive Officer of the”.

**19 Paragraphs 131(6)(b) and (7)(b)**

Omit “Chief Executive Officer of the”.

**20 Paragraphs 132(3)(b) and (4)(b)**

Omit “Chief Executive Officer of the”.

**21 Paragraph 133(2)(b)**

Omit “Chief Executive Officer of the”.

## **Part 3—Amendments relating to the Federal Circuit and Family Court of Australia Act 2021**

### *Education Services for Overseas Students Act 2000*

#### **22 Paragraph 130(12)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

#### **23 Paragraph 131(10)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

#### **24 Paragraph 133(3)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

## **Schedule 4—Amendment of the Fisheries Management Act 1991**

### **Part 1—Amendments**

#### *Fisheries Management Act 1991*

##### **1 Subsection 4(1)**

Insert:

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

##### **2 Subsection 93(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 30 penalty units.

##### **3 Subsections 93(2) and (3)**

Repeal the subsections (including the notes), substitute:

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

##### **4 At the end of Division 4 of Part 6**

Add:

##### **98A Infringement notices**

*Provisions subject to an infringement notice*

- (1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) subsection 93(1);
  - (b) subsection 95(5).

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

*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an AFMA staff member appointed under section 83 of this Act to be an officer for the purposes of this Act is an infringement officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The CEO may, in writing, delegate to an AFMA staff member who is an SES employee or acting SES employee the CEO's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the CEO.

*Extra-territorial operation*

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory, and each other area, to which those provisions extend under section 7 or 8 of this Act.

**5 Paragraph 168(2)(i)**

Repeal the paragraph.

## **Part 2—Application and saving provisions**

### **6 Application and saving provisions—infringement notices**

- (1) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 98A of the *Fisheries Management Act 1991*, applies in relation to alleged contraventions of provisions referred to in subsection 98A(1) of the *Fisheries Management Act 1991* occurring on or after the commencement of this Part.
- (2) Paragraph 168(2)(i) of the *Fisheries Management Act 1991* and the regulations made for the purposes of that paragraph, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to alleged contraventions of provisions referred to in that paragraph occurring before that commencement.

## Schedule 5—Amendment of the Tertiary Education Quality and Standards Agency Act 2011

### Part 1—Main amendments

#### Division 1—Amendments

#### *Tertiary Education Quality and Standards Agency Act 2011*

##### 1 Section 5 (definition of *civil penalty order*)

Repeal the definition.

##### 2 Section 5 (definition of *civil penalty provision*)

Repeal the definition, substitute:

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

##### 3 Section 5

Repeal the following definitions:

- (a) definition of *enforcement powers*;
- (b) definition of *enforcement warrant*;
- (c) definition of *evidential material*;
- (d) definition of *issuing officer*;
- (e) definition of *monitoring powers*;
- (f) definition of *monitoring warrant*;
- (g) definition of *person assisting*;
- (h) definition of *warrant*.

##### 4 Part 6 (heading)

Repeal the heading, substitute:

## **Part 6—Information gathering and authorised officers**

### **5 Divisions 2 to 6 of Part 6**

Repeal the Divisions.

### **6 Division 7 of Part 6 (heading)**

Repeal the heading, substitute:

### **Division 7—Authorised officers**

#### **7 Section 95**

Repeal the section.

#### **8 Division 8 of Part 6**

Repeal the Division.

#### **9 Before Division 1 of Part 7**

Insert:

### **Division 1A—Simplified outline**

#### **97 Simplified outline of this Part**

- There are administrative sanctions for non-compliant registered higher education providers.
- There are a range of offences and civil penalties for contraventions of this Act.
- The Regulatory Powers Act is triggered to allow a range of enforcement actions in relation to this Act.
- Authorised officers are permitted to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers under that Act for the purposes of

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determining whether various provisions of this Act or instruments under this Act have been complied with.

- Authorised officers may enter premises and exercise investigation powers to determine whether there has been a contravention of provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.
- A relevant court can order the payment of a civil penalty for a contravention of a civil penalty provision.
- Infringement notices can be issued for an alleged contravention of a civil penalty provision.
- Undertakings to comply with this Act may be accepted and enforced under the Regulatory Powers Act. If a person gives an undertaking, the undertaking may be enforced by a court order.
- A court can grant an injunction restraining a person from contravening a provision of this Act or requiring a person to comply with a provision of this Act. A court can also grant an injunction relating to online locations that facilitate provision of, or advertising of, academic cheating services.

**10 Subdivision A of Division 2 of Part 7 (heading)**

Repeal the heading.

**11 Subdivisions B and C of Division 2 of Part 7**

Repeal the Subdivisions.

**12 Division 3 of Part 7**

Repeal the Division, substitute:



## Division 3—Monitoring

### 115 Monitoring powers

#### *Provisions subject to monitoring*

- (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) a provision of an instrument made under subsection 58(1); or
  - (c) 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.

#### *Information subject to monitoring*

- (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.

#### *Related provisions*

- (3) For the purposes of Part 2 of the Regulatory Powers Act:
- (a) a provision covered by subsection 130(1) of the *Education Services for Overseas Students Act 2000* is related to the provisions mentioned in subsection (1) of this section; and
  - (b) a provision covered by subsection 130(2) of the *Education Services for Overseas Students Act 2000* is related to the information mentioned in subsection (2) of this section.

#### *Authorised applicant*

- (4) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
-

- (a) a Commissioner;
- (b) the Chief Executive Officer;
- (c) an authorised officer.

*Authorised person*

- (5) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

*Issuing officer*

- (6) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

*Relevant chief executive*

- (7) For the purposes of Part 2 of the Regulatory Powers Act, the Chief Executive Officer is the relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).
- (8) The Chief Executive Officer may, in writing, delegate the powers and functions mentioned in subsection (9) to a member of the staff of TEQSA who is:
  - (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.
- (9) The powers and functions that may be delegated are:
  - (a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

- (10) A person exercising powers or performing functions under a delegation under subsection (8) must comply with any directions of the Chief Executive Officer.

*Relevant court*

- (11) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) the Federal Court;
  - (b) the Federal Circuit Court.

*Person assisting*

- (12) 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 the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

*Extension to external Territories*

- (13) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2), extends to every external Territory.

## **Division 4—Investigation**

### **116 Investigation powers**

*Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against 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.

*Related provisions*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, each of the following provisions is related to evidential material that relates to a provision mentioned in subsection (1):
- (a) an offence against the *Education Services for Overseas Students Act 2000*;
  - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to the *Education Services for Overseas Students Act 2000*.

*Authorised applicant*

- (3) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) a Commissioner;
  - (b) the Chief Executive Officer;
  - (c) an authorised officer.

*Authorised person*

- (4) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

*Issuing officer*

- (5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

*Relevant chief executive*

- (6) For the purposes of Part 3 of the Regulatory Powers Act, the Chief Executive Officer is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

- (7) The Chief Executive Officer may, in writing, delegate the powers and functions mentioned in subsection (8) to a member of the staff of TEQSA who is:
- (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.
- (8) The powers and functions that may be delegated are:
- (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the Chief Executive Officer.

*Relevant court*

- (10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit Court.

*Person assisting*

- (11) 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 a provision mentioned in subsection (1).

*Extension to external Territories*

- (12) Part 3 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **Division 5—Civil penalty provisions**

### **117 Civil penalty provisions**

#### *Enforceable 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.

#### *Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act:
- (a) a Commissioner;
  - (b) the Chief Executive Officer.
- (3) The Chief Executive Officer may, in writing, delegate the Chief Executive Officer's powers under Part 4 of the Regulatory Powers Act in relation to the civil penalty provisions of this Act to a member of the staff of TEQSA who is:
- (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- (4) A person exercising powers under a delegation under subsection (3) must comply with any directions of the Chief Executive Officer.

#### *Relevant court*

- (5) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) the Federal Court;
  - (b) the Federal Circuit Court.

*Maximum penalties*

- (6) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty in relation to a contravention of a civil penalty provision of this Act (except subsection 114A(3) or 114B(2)) must not be more than the applicable pecuniary penalty specified for the provision.

Note: If a court is satisfied that a body corporate has contravened subsection 114A(3) or 114B(2) of this Act (about academic cheating services), under subsection 82(5) of the Regulatory Powers Act the court may determine a pecuniary penalty not exceeding an amount equal to 5 times the pecuniary penalty specified for the civil penalty provision.

*Extension to external Territories*

- (7) Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

## **Division 6—Infringement notices**

### **118 Infringement notices**

*Provisions subject to an infringement notice*

- (1) A civil penalty provision of this Act is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

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

*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an authorised officer is an infringement officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Chief Executive Officer is the relevant chief executive in relation to the provisions mentioned in subsection (1).

- (4) The Chief Executive Officer may, in writing, delegate the Chief Executive Officer's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1) to a member of the staff of TEQSA who is:
- (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position.
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the Chief Executive Officer.

*Extension to external Territories*

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **Division 7—Enforceable undertakings**

### **119 Enforceable undertakings**

*Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

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

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):
- (a) a Commissioner;
  - (b) the Chief Executive Officer.
- (3) The Chief Executive Officer may, in writing, delegate the Chief Executive Officer's powers under Part 6 of the Regulatory Powers



Act in relation to the provisions mentioned in subsection (1) to a member of the staff of TEQSA who is:

- (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- (4) A person exercising powers under a delegation under subsection (3) must comply with any directions of the Chief Executive Officer.

*Relevant court*

- (5) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit Court.

*Publication of undertakings*

- (6) An authorised person in relation to a provision mentioned in subsection (1) may publish an undertaking, given in relation to the provision by a regulated entity, on the Register.

*Extension to external Territories*

- (7) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

**13 Division 4 of Part 7 (heading)**

Repeal the heading, substitute:

**Division 8—Injunctions**

**14 Section 127**

Repeal the section, substitute:

## **127 Injunctions—general**

### *Enforceable provisions*

- (1) The provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act.

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

### *Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, each of the following persons is an authorised person in relation to the provisions mentioned in subsection (1):
- (a) a Commissioner;
  - (b) the Chief Executive Officer.
- (3) The Chief Executive Officer may, in writing, delegate the Chief Executive Officer's powers under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) to a member of the staff of TEQSA who is:
- (a) an SES employee or an acting SES employee; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.
- (4) A person exercising powers under a delegation under subsection (3) must comply with any directions of the Chief Executive Officer.

### *Relevant court*

- (5) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
  - (b) the Federal Circuit Court.

*Extension to external Territories*

- (6) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

**15 At the end of section 127A**

Add:

*Application of the Regulatory Powers Act*

- (13) Sections 122 to 125 of the Regulatory Powers Act apply in relation to an application under this section for the grant of an injunction, or to the grant of an injunction under this section, in a corresponding way to the way in which they apply to an application under section 121 of that Act for the grant of an injunction or to the grant of an injunction under section 121 of that Act.

**16 Sections 128 to 131**

Repeal the sections.

**Division 2—Application and saving provisions**

**17 Saving provision—identity cards**

Despite the repeal of section 95 of the *Tertiary Education Quality and Standards Agency Act 2011* made by this Part, that section, as in force immediately before the commencement of this Part, continues to apply on and after that commencement in relation to a person who ceased to be an authorised officer before that commencement.

**18 Application and saving provisions—monitoring and investigation**

- (1) Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, applies in relation to the following:
- (a) determining whether a provision mentioned in subsection 115(1) of the *Tertiary Education Quality and*

*Standards Agency Act 2011* has been complied with before, on or after the commencement of this Part;

- (b) determining whether information given in compliance, or purported compliance, with a provision of the *Tertiary Education Quality and Standards Agency Act 2011* before, on or after the commencement of this Part is correct.
- (2) Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, applies in relation to evidential material that relates to a provision mentioned in subsection 116(1) of the *Tertiary Education Quality and Standards Agency Act 2011*, if the suspected contravention of the provision occurred before, on or after the commencement of this Part.
- (3) Divisions 2 to 8 of Part 6 of the *Tertiary Education Quality and Standards Agency Act 2011*, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to the following:
- (a) an application for a warrant made, but not decided, under Division 6 of that Part before that commencement;
  - (b) a warrant issued, or completed and signed, under Division 6 of that Part before, on or after that commencement as a result of an application made before that commencement;
  - (c) powers exercised, rights created and duties imposed, under those Divisions before, on or after that commencement as a result of:
    - (i) an entry onto premises before that commencement with the consent of the occupier of the premises; or
    - (ii) an entry onto premises before, on or after that commencement as a result of a warrant referred to in paragraph (b);
  - (d) things secured or seized under those Divisions before, on or after that commencement;
  - (e) a requirement made under subsection 75(2) of that Act before, on or after that commencement.
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**19 Application and saving provisions—civil penalties**

- (1) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, applies in relation to contraventions of civil penalty provisions of the *Tertiary Education Quality and Standards Agency Act 2011* occurring on or after the commencement of this Part.
- (2) Subdivisions B and C of Division 2 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to contraventions of civil penalty provisions of that Act occurring before that commencement.

**20 Application provision—infringement notices**

Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 6 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, applies in relation to alleged contraventions of civil penalty provisions of the *Tertiary Education Quality and Standards Agency Act 2011* occurring on or after the commencement of this Part.

**21 Application and saving provisions—enforceable undertakings**

- (1) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 7 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, applies in relation to undertakings given on or after the commencement of this Part.
- (2) Division 3 of Part 7 of the *Tertiary Education Quality and Standards Agency Act 2011*, as in force immediately before the commencement of this Part, continues to apply on and after that commencement in relation to the following:
  - (a) an undertaking given under that Division before that commencement;
  - (b) an application for an order made, but not decided, under that Division before that commencement;

- (c) an order made under that Division before, on or after that commencement as a result of an application made before that commencement.

## **22 Application and saving provisions—injunctions**

- (1) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 127 of the *Tertiary Education Quality and Standards Agency Act 2011*, applies in relation to contraventions occurring on or after the commencement of this Part.
- (2) Sections 127 and 128 to 131 of the *Tertiary Education Quality and Standards Agency Act 2011*, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to the following:
  - (a) contraventions referred to in section 127 of that Act occurring before that commencement;
  - (b) an application made, but not decided, under section 127 of that Act before that commencement;
  - (c) an injunction granted under section 127 or 128 of that Act before, on or after that commencement as a result of an application made under section 127 of that Act before that commencement.
- (3) Sections 128 to 131 of the *Tertiary Education Quality and Standards Agency Act 2011*, as in force immediately before the commencement of this Part, continue to apply on and after that commencement in relation to the following:
  - (a) an application made, but not decided, under section 127A of that Act before that commencement;
  - (b) an injunction granted under section 127A or 128 of that Act before, on or after that commencement as a result of an application made under section 127A of that Act before that commencement.

**Part 2—Amendments relating to the Education  
Legislation Amendment (Up-front Payments  
Tuition Protection) Act 2020**

*Tertiary Education Quality and Standards Agency Act 2011*

**23 Section 5 (definition of *applicable court*)**

Repeal the definition.

**24 Section 5 (definition of *civil penalty provision*)**

Repeal the definition, substitute:

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

**25 Section 5 (definition of *judicial officer*)**

Repeal the definition.

**26 Section 5**

Insert:

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

**27 Section 104**

Repeal the section.

**28 Subsection 115(1) (note) (the note inserted by item 11 of  
Schedule 1 to the *Education Legislation Amendment  
(Up-front Payments Tuition Protection) Act 2020*)**

Repeal the note.

**29 Subsection 115(2)**

Repeal the subsection, substitute:

*Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of this Act, or of the Up-front Payments Guidelines, 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.

**30 Subsections 115(4) and (5)**

Repeal the subsections, substitute:

*Authorised applicant*

- (4) For the purposes of Part 2 of the Regulatory Powers Act:
- (a) the Chief Executive Officer and each Commissioner and authorised officer is an authorised applicant in relation to:
    - (i) a provision of this Act (except Part 5A); and
    - (ii) a provision of an instrument made under subsection 58(1); and
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and
    - (iv) information given in compliance or purported compliance with a provision of this Act (except Part 5A) or of the Up-front Payments Guidelines; and
  - (b) each HESA investigator and authorised officer is an authorised applicant in relation to:
    - (i) a provision of Part 5A; and
    - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A; and
    - (iii) information given in compliance or purported compliance with a provision of Part 5A.

*Authorised person*

- (5) For the purposes of Part 2 of the Regulatory Powers Act:
- (a) an authorised officer is an authorised person in relation to:
    - (i) a provision of this Act (except Part 5A); and
-



- (ii) a provision of an instrument made under subsection 58(1); and
  - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and
  - (iv) information given in compliance or purported compliance with a provision of this Act (except Part 5A) or of the Up-front Payments Guidelines; and
- (b) each HESA investigator and authorised officer is an authorised person in relation to:
- (i) a provision of Part 5A; and
  - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A; and
  - (iii) information given in compliance or purported compliance with a provision of Part 5A.

### **31 Subsections 115(7) to (10)**

Repeal the subsections, substitute:

*Relevant chief executive*

- (7) For the purposes of Part 2 of the Regulatory Powers Act:
- (a) the Chief Executive Officer is a relevant chief executive in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2); and
  - (b) the Secretary is also a relevant chief executive in relation to:
    - (i) a provision of Part 5A; and
    - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A; and
    - (iii) information given in compliance or purported compliance with a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

### **32 Subsections 116(3) and (4)**

Repeal the subsections, substitute:

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*Authorised applicant*

- (3) For the purposes of Part 3 of the Regulatory Powers Act:
- (a) the Chief Executive Officer and each Commissioner and authorised officer is an authorised applicant in relation to evidential material that relates to:
    - (i) an offence against this Act (except Part 5A); or
    - (ii) a civil penalty provision of this Act (except Part 5A); or
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and
  - (b) each HESA investigator and authorised officer is an authorised applicant in relation to evidential material that relates to:
    - (i) an offence against Part 5A; or
    - (ii) a civil penalty provision of Part 5A; or
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A.

*Authorised person*

- (4) For the purposes of Part 3 of the Regulatory Powers Act:
- (a) an authorised officer is an authorised person in relation to evidential material that relates to:
    - (i) an offence against this Act (except Part 5A); or
    - (ii) a civil penalty provision of this Act (except Part 5A); or
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of this Act (except Part 5A); and
  - (b) each HESA investigator and authorised officer is an authorised person in relation to evidential material that relates to:
    - (i) an offence against Part 5A; or
    - (ii) a civil penalty provision of Part 5A; or
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A.

### **33 Subsections 116(6) to (9)**

Repeal the subsections, substitute:

*Relevant chief executive*

- (6) For the purposes of Part 3 of the Regulatory Powers Act:
- (a) the Chief Executive Officer is a relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1); and
  - (b) the Secretary is also a relevant chief executive in relation to evidential material that relates to:
    - (i) an offence against Part 5A; or
    - (ii) a civil penalty provision of Part 5A; or
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

### **34 Subsections 117(2) to (4)**

Repeal the subsections, substitute:

*Authorised applicant*

- (2) For the purposes of Part 4 of the Regulatory Powers Act:
- (a) each of the following persons is an authorised applicant in relation to the civil penalty provisions of this Act (except a civil penalty provision of Part 5A):
    - (i) a Commissioner;
    - (ii) the Chief Executive Officer; and
  - (b) the Higher Education Tuition Protection Director is an authorised applicant in relation to the civil penalty provisions of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2).

### **35 Subsections 118(2) to (6)**

Repeal the subsections, substitute:

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*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act:
- (a) an authorised officer is an infringement officer in relation to the provisions mentioned in subsection (1) (except a provision of Part 5A); and
  - (b) the Higher Education Tuition Protection Director is an infringement officer in relation to a civil penalty provision of Part 5A.

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act:
- (a) the Chief Executive Officer is the relevant chief executive in relation to the provisions mentioned in subsection (1) (except a provision of Part 5A); and
  - (b) the Higher Education Tuition Protection Director is the relevant chief executive in relation to a civil penalty provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2).

**36 Subsections 119(2) to (4)**

Repeal the subsections, substitute:

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act:
- (a) each of the following persons is an authorised person in relation to a provision of this Act (except Part 5A):
    - (i) a Commissioner;
    - (ii) the Chief Executive Officer; and
  - (b) the Secretary is an authorised person in relation to a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

**37 Subsection 127(1) (note) (the note inserted by item 14 of Schedule 1 to the *Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020*)**

Repeal the note.

**38 Subsections 127(2) to (4)**

Repeal the subsections, substitute:

*Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act:
- (a) each of the following persons is an authorised person in relation to a provision of this Act (except Part 5A):
    - (i) a Commissioner;
    - (ii) the Chief Executive Officer; and
  - (b) the Secretary is an authorised person in relation to a provision of Part 5A.

Note: For delegation by the Chief Executive Officer, see subsection 154L(2). For delegation by the Secretary, see section 201A.

**39 Division 5 of Part 7 (the Division inserted by item 15 of Schedule 1 to the *Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020*)**

Repeal the Division.

**40 Subsection 154L(1)**

Omit “(other than the functions and powers referred to in subsection (2))”.

**41 Subsection 154L(2)**

Omit “Part 5A of”.

**42 Paragraph 154L(2)(b)**

After “Executive Level”, insert “1 or”.

**Schedule 5** Amendment of the Tertiary Education Quality and Standards Agency Act 2011

**Part 2** Amendments relating to the Education Legislation Amendment (Up-front Payments Tuition Protection) Act 2020

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**43 Subsection 201A(1)**

Omit “or Division 5 of Part 7”.

## **Part 3—Amendments relating to the Federal Circuit and Family Court of Australia Act 2021**

### *Tertiary Education Quality and Standards Agency Act 2011*

#### **44 Paragraph 115(11)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

#### **45 Paragraph 116(10)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

#### **46 Paragraph 117(5)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

#### **47 Paragraph 119(5)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

#### **48 Paragraph 127(5)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

## Schedule 6—Amendment of the Tobacco Advertising Prohibition Act 1992

### Part 1—Main amendments

#### Division 1—Amendments

#### *Tobacco Advertising Prohibition Act 1992*

##### 1 Section 8

Insert:

*authorised officer* means a person appointed under section 25G as an authorised officer.

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

*Secretary* means the Secretary of the Department.

##### 2 After Part 3

Insert:

### Part 3A—Enforcement

#### Division 1—Simplified outline

##### 25A Simplified outline of this Part

- The Regulatory Powers Act is triggered to allow a range of enforcement actions in relation to this Act.
- Authorised officers are permitted to enter premises under a monitoring warrant or with consent of the occupier and to exercise monitoring powers under that Act for the purposes of determining whether provisions of this Act have been complied with.



- Authorised officers are permitted to enter premises under an investigation warrant or with consent of the occupier and to exercise investigation powers under that Act for the purposes of gathering material relating to the contravention of offences in this Act.
- Undertakings to comply with this Act may be accepted and enforced under that Act. If a person gives an undertaking, the undertaking may be enforced by a court order.
- A court can grant an injunction restraining a person from contravening provisions of this Act.
- The Secretary may appoint authorised officers for the purposes of those officers exercising powers under that Act.

## **Division 2—Monitoring powers**

### **25B Monitoring powers**

#### *Provisions subject to monitoring*

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
  - (a) an offence against 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.

#### *Related provisions*

- (2) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), there are no related provisions.

*Authorised applicant*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to the provisions mentioned in subsection (1):
- (a) the Secretary;
  - (b) an SES employee, or acting SES employee, in the Department.

*Authorised person*

- (4) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to the provisions mentioned in subsection (1).

*Issuing officer*

- (5) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (6) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (7) The Secretary may, in writing, delegate the powers and functions mentioned in subsection (8) to an SES employee, or acting SES employee, in the Department.
- (8) The powers and functions that may be delegated are:
- (a) powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).
- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the Secretary.

*Relevant court*

- (10) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Person assisting*

- (11) 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 the provisions mentioned in subsection (1).

*Extension to external Territories*

- (12) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **Division 3—Investigation powers**

### **25C Investigation powers**

*Provisions subject to investigation*

- (1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
  - (b) 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.

*Related provisions*

- (2) For the purposes of Part 3 of the Regulatory Powers Act, as that Part applies in relation to evidential material that relates to a

provision mentioned in subsection (1), there are no related provisions.

*Authorised applicant*

- (3) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Secretary;
  - (b) an SES employee, or acting SES employee, in the Department.

*Authorised person*

- (4) For the purposes of Part 3 of the Regulatory Powers Act, an authorised officer is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

*Issuing officer*

- (5) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

*Relevant chief executive*

- (6) For the purposes of Part 3 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (7) The Secretary may, in writing, delegate the powers and functions mentioned in subsection (8) to an SES employee, or acting SES employee, in the Department.
- (8) The powers and functions that may be delegated are:
- (a) powers and functions under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
  - (b) powers and functions under the Regulatory Powers Act that are incidental to a power or function mentioned in paragraph (a).

- (9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the Secretary.

*Relevant court*

- (10) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Person assisting*

- (11) 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 a provision mentioned in subsection (1).

*Extension to external Territories*

- (12) Part 3 of the Regulatory Powers Act, as that Part applies in relation to a provision mentioned in subsection (1), extends to every external Territory.

## **25D Modifications of Part 3 of the Regulatory Powers Act**

Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 25C(1) of this Act as if a reference in paragraphs 66(1)(c) and 67(1)(a) of the Regulatory Powers Act to 60 days were a reference to 90 days.

Note: Those paragraphs relate to the period for returning things seized under Part 3 of the Regulatory Powers Act.

## Division 4—Enforceable undertakings

### 25E Enforceable undertakings

#### *Enforceable provisions*

- (1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is an offence against this Act.

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

#### *Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

#### *Relevant court*

- (4) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

#### *Extension to external Territories*

- (5) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **Division 5—Injunctions**

### **25F Injunctions**

#### *Enforceable provisions*

- (1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is an offence against this Act.

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

#### *Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

#### *Relevant court*

- (4) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia;

#### *Extension to external Territories*

- (5) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## Division 6—Appointment of authorised officers

### 25G Appointment of authorised officers

- (1) The Secretary may, in writing, appoint the following persons as authorised officers for the purposes of this Part:
  - (a) a person who is appointed or engaged under the *Public Service Act 1999*;
  - (b) a person who is appointed or engaged otherwise than under the *Public Service Act 1999* by the Commonwealth or by a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*;
  - (c) a member or special member of the Australian Federal Police.
- (2) The Secretary may appoint a person as an authorised officer only if the Secretary is satisfied that the person has suitable qualifications, training or experience.
- (3) An authorised officer is appointed for the period specified in the instrument of appointment.

Note: An authorised officer is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

## Division 2—Application provisions

### 3 Application provision—monitoring

Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 2 of Part 3A of the *Tobacco Advertising Prohibition Act 1992*, applies in relation to determining whether a provision mentioned in subsection 25B(1) of the *Tobacco Advertising Prohibition Act 1992* has been complied with on or after the commencement of this Part.



#### **4 Application provision—investigation**

Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 3 of Part 3A of the *Tobacco Advertising Prohibition Act 1992*, applies in relation to evidential material that relates to a provision mentioned in subsection 25C(1) of the *Tobacco Advertising Prohibition Act 1992*, if the suspected contravention of the provision occurred on or after the commencement of this Part.

#### **5 Application provision—enforceable undertakings**

Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 4 of Part 3A of the *Tobacco Advertising Prohibition Act 1992*, applies in relation to undertakings given on or after the commencement of this Part.

#### **6 Application provision—injunctions**

Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Division 5 of Part 3A of the *Tobacco Advertising Prohibition Act 1992*, applies in relation to contraventions occurring on or after the commencement of this Part.

## **Part 2—Amendments relating to the Federal Circuit and Family Court of Australia Act 2021**

### *Tobacco Advertising Prohibition Act 1992*

#### **7 Paragraph 25B(10)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

#### **8 Paragraph 25C(10)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

#### **9 Paragraph 25E(4)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

#### **10 Paragraph 25F(4)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia (Division 2).

## **Schedule 7—Amendment of the Tobacco Plain Packaging Act 2011**

### **Part 1—Main amendments**

#### **Division 1—Amendments**

##### ***Tobacco Plain Packaging Act 2011***

#### **1 Subsection 4(1)**

Repeal the following definitions:

- (a) definition of *Deputy President*;
- (b) definition of *non-presidential member*.

#### **2 Chapter 4 (heading)**

Repeal the heading, substitute:

### **Chapter 4—Powers to monitor compliance with and investigate contraventions of this Act**

#### **3 Section 51**

Omit:

This Chapter applies the Regulatory Powers Act to enable authorised officers to enter premises and exercise investigation powers to determine whether there has been a contravention of any of the provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

An authorised officer exercising investigation powers may be assisted by other persons if that assistance is necessary and reasonable.

substitute:

The Regulatory Powers Act is triggered to allow the monitoring of compliance with, and the investigation of contraventions of, this Act.

Authorised officers may enter premises and exercise monitoring powers to determine whether there has been compliance with provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

Authorised officers may enter premises and exercise investigation powers to determine whether there has been a contravention of provisions of this Act or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act.

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

An authorised officer exercising monitoring or investigation powers may be assisted by other persons if that assistance is necessary and reasonable.

#### 4 After Part 1 of Chapter 4

Insert:

### Part 1A—Monitoring

#### 51A Monitoring powers

*Provisions subject to monitoring*

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
  - (a) an offence against 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 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.

*Related provisions*

- (2) For the purposes of Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), there are no related provisions.

*Authorised applicant and authorised person*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, an authorised officer is both an authorised applicant and an authorised person in relation to the provisions mentioned in subsection (1).

*Issuing officer*

- (4) For the purposes of Part 2 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (5) For the purposes of Part 2 of the Regulatory Powers Act, the Secretary is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (6) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers and functions under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).
- (7) In exercising powers or performing functions delegated under subsection (6), the delegate must comply with any directions of the Secretary.

*Relevant court*

- (8) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;

(b) the Federal Circuit Court of Australia.

*Additional monitoring powers*

- (9) For the purposes of determining whether a provision mentioned in subsection (1) has been, or is being, complied with, the additional monitoring powers mentioned in subsection (10) are taken to be included in the monitoring powers under Part 2 of the Regulatory Powers Act.
- (10) The additional monitoring powers are the powers to take, test and analyse samples of any thing on premises entered under Part 2 of the Regulatory Powers Act.

*Use of force in executing a warrant*

- (11) In executing a monitoring warrant under Part 2 of the Regulatory Powers Act as that Part applies in relation to the provisions mentioned in subsection (1):
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

*Person assisting*

- (12) 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 the provisions mentioned in subsection (1).

*Self-incrimination etc.*

- (13) Despite section 17 of the Regulatory Powers Act, an individual is not excused from answering a question, or producing a document, under subsection 24(3) of that Act, as Part 2 of that Act applies in relation to this Act, on the ground that answering the question, or producing the document, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

(14) However:

- (a) the answer given or document produced; and
- (b) the answering of the question or the production of the document; and
- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

- (d) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
- (e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

(15) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to answering a question, or producing a document, under subsection 24(3) of the Regulatory Powers Act, as Part 2 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

*Extension to external Territories*

(16) Part 2 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **5 Subsections 52(4) and (5)**

Repeal the subsections, substitute:

*Issuing officer*

(4) For the purposes of Part 3 of the Regulatory Powers Act, a magistrate is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1).

**6 Subsection 52(10)**

Omit “additional power mentioned in subsection (11) is”, substitute “additional powers mentioned in subsection (11) are”.

**7 Subsection 52(11)**

Omit “investigation power is the power to take samples”, substitute “investigation powers are the powers to take, test and analyse samples”.

**8 Subsections 52(14) and (15)**

Repeal the subsections, substitute:

*Self-incrimination etc.*

- (14) Despite section 47 of the Regulatory Powers Act, an individual is not excused from answering a question, or producing a document, under subsection 54(3) of that Act, as Part 3 of that Act applies in relation to this Act, on the ground that answering the question, or producing the document, might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (15) However:

- (a) the answer given or document produced; and
- (b) the answering of the question or the production of the document; and
- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

are not admissible in evidence against the individual in criminal proceedings, other than proceedings for an offence against:

- (d) section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
- (e) section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act.

- (15A) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a
-



penalty for an offence) in relation to answering a question, or producing a document, under subsection 54(3) of the Regulatory Powers Act, as Part 3 of that Act applies in relation to this Act, the individual is not excused from answering the question or producing the document under that subsection on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

## **9 At the end of Part 2 of Chapter 4**

Add:

## **53 Modifications of Part 3 of the Regulatory Powers Act**

Part 3 of the Regulatory Powers Act applies in relation to evidential material that relates to a provision mentioned in subsection 52(1) of this Act as if a reference in paragraphs 66(1)(c) and 67(1)(a) of the Regulatory Powers Act to 60 days were a reference to 90 days.

Note: Those paragraphs relate to the period for returning things seized under Part 3 of the Regulatory Powers Act.

## **10 Section 84**

Omit “and for infringement notices”, substitute “, for infringement notices, for enforceable undertakings and for injunctions”.

## **11 At the end of section 84**

Add:

- Undertakings to comply with this Act may be accepted and enforced under Part 6 of the Regulatory Powers Act. If a person gives an undertaking, the undertaking may be enforced by a court order.
- A court can grant an injunction under Part 7 of the Regulatory Powers Act restraining a person from contravening a provision of this Act or requiring a person to comply with a provision of this Act.

**12 Part 2 of Chapter 5 (heading)**

Repeal the heading, substitute:

**Part 2—Civil penalties, infringement notices,  
enforceable undertakings and injunctions**

**13 At the end of Part 2 of Chapter 5**

Add:

**87 Enforceable undertakings**

*Enforceable provisions*

- (1) A provision is enforceable under Part 6 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
  - (b) a civil penalty provision of this Act.

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

*Authorised person*

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 6 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

*Relevant court*

- (4) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Extension to external Territories*

- (5) Part 6 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **88 Injunctions**

*Enforceable provisions*

- (1) A provision is enforceable under Part 7 of the Regulatory Powers Act if it is:
- (a) an offence against this Act; or
  - (b) a civil penalty provision of this Act.

Note: Part 7 of the Regulatory Powers Act allows a provision to be enforced by obtaining an injunction.

*Authorised person*

- (2) For the purposes of Part 7 of the Regulatory Powers Act, the Secretary is an authorised person in relation to the provisions mentioned in subsection (1).
- (3) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, in the Department the Secretary's powers under Part 7 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1).

*Relevant court*

- (4) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court of Australia;
  - (b) the Federal Circuit Court of Australia.

*Extension to external Territories*

- (5) Part 7 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

## **Division 2—Application provisions**

### **14 Application provision—monitoring**

Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under Part 1A of Chapter 4 of the *Tobacco Plain Packaging Act 2011*, applies in relation to determining whether a provision mentioned in subsection 51A(1) of the *Tobacco Plain Packaging Act 2011* has been complied with on or after the commencement of this Part.

### **15 Application provisions—investigation**

- (1) The amendments of section 52 of the *Tobacco Plain Packaging Act 2011* made by this Part apply in relation to entries to premises that occur on or after the commencement of this Part.
- (2) Section 53 of the *Tobacco Plain Packaging Act 2011*, as added by this Part, applies in relation to entries to premises that occur on or after the commencement of this Part.

### **16 Application provision—enforceable undertakings**

Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 87 of the *Tobacco Plain Packaging Act 2011*, applies in relation to undertakings given on or after the commencement of this Part.

### **17 Application provision—injunctions**

Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies under section 88 of the *Tobacco Plain Packaging Act 2011*, applies in relation to contraventions occurring on or after the commencement of this Part.

## **Part 2—Amendments relating to the Federal Circuit and Family Court of Australia Act 2021**

### *Tobacco Plain Packaging Act 2011*

#### **18 Paragraph 51A(8)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

#### **19 Paragraph 87(4)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

#### **20 Paragraph 88(4)(b)**

Repeal the paragraph, substitute:

- (b) the Federal Circuit and Family Court of Australia  
(Division 2).

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*[Minister's second reading speech made in—  
House of Representatives on 3 December 2020  
Senate on 25 February 2021]*

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(155/20)

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