

# **Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Regulations 2002 (No. 1) 2002 No. 60**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 2002 No. 60**

Issued by authority of the Minister for Agriculture, Fisheries and Forestry

*Agriculture and Veterinary Chemicals Code Act 1994*

*Australian Horticultural Corporation Act 1987* (as continued in force under section 45 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*)

*Australian Wine and Brandy Corporation Act 1980*

*Dairy Produce Act 1986*

*Export Control Act 1982*

*Fisheries Management Act 1991*

*Meat Inspection Act 1983*

*National Residue Survey (Customs) Levy Act 1998*

*National Residue Survey (Excise) Levy Act 1998*

*Primary Industries Levies and Charges Collection Act 1991*

*Quarantine Act 1908*

*Torres Strait Fisheries Act 1984*

Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Regulations 2002 (No. 1)

Section 6 of the *Agricultural and Veterinary Chemicals Code Act 1994*, section 121 of the *Australian Horticultural Corporation Act 1987* (as continued in force under section 45 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*), section 46 of the *Australian Wine and Brandy Corporation Act 1980*, section 126 of the *Dairy Produce Act 1986*, section 25 of the *Export Control Act 1982*, section 168 of the *Fisheries Management Act 1991*, sections 36 and 37 of the *Meat Inspection Act 1983*, section 8 of the *National Residue Survey (Customs) Levy Act 1998*, section 8 of the *National Residue Survey (Excise) Levy Act 1998*, section 30 of the *Primary Industries Levies and Charges Collection Act 1991*, section 87 of the *Quarantine Act 1908* and section 60 of the *Torres Strait Fisheries Act 1984* respectively, provide that the Governor-General may make regulations prescribing matters required or permitted by the Acts to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Acts.

The purpose of the Regulations is to bring the criminal offence provisions within Agriculture, Fisheries and Forestry portfolio regulations into line with the general principles of criminal responsibility codified in Chapter 2 of the Criminal Code as set out in the *Criminal Code Act 1995*.

Chapter 2 of the Criminal Code took effect on 15 December 2001. The purpose of Chapter 2 is to codify principles of criminal responsibility applicable to offences created by Commonwealth legislation and regulations. The effect of the chapter may be summarised as follows:

- the chapter replaces common law notions of a criminal act and a guilty mind with physical and fault elements respectively.
- one key effect of the chapter is that offences of strict liability, that is offences in respect of which a fault element need not be proven at present, gain fault elements by force of the chapter after 15 December 2001. On the other hand, the Criminal Code permits the regulations to specify certain offences to be offences of strict liability, to maintain their current operation.
- the chapter requires proof of defences at an 'evidential' standard unless the law creating the offence expressly imposes proof at the higher, 'legal', standard. An evidential burden means the burden of adducing or pointing to evidence that suggests a reasonable possibility that a matter exists or does not exist. By contrast, a legal burden is more onerous and is defined in the Criminal Code to mean the burden of (positively) proving the existence of a matter.

The Regulations affected are the *Agricultural and Veterinary Chemicals Code Regulations 1995*, the *Australian Horticultural Corporation (Dried Fruits Export Control) Regulations*, the *Australian Horticultural Corporation (Honey Export Control) Regulations*, the *Australian Wine and Brandy Corporation Regulations 1981*, the *Dairy Adjustment Levy Collection Regulations 2000*, the *Export Control (Orders) Regulations 1982*, the *Fisheries Management Regulations 1992*, the *Meat Inspection (Orders) Regulations*, the *Primary Industries Levies and Charges Collection Regulations 1991*, the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*, the *Quarantine Regulations 2000*, the *Quarantine (Cocos Islands) Regulations* and the *Torres Strait Fisheries Regulations 1985*.

The proposed Regulations address the following:

- the inclusion of new subregulations making it clear that certain offences are offences of strict liability (for example see item [1] of Schedule 1);
- clarifying certain regulations to make it clear that reasonable excuse is a defence to the offence (for example see item [1] of Schedule 1);
- the inclusion of standard notes referring to the fact that under the Criminal Code a defendant seeking to rely on a reasonable excuse defence carries the evidential burden (for example see item [1] of Schedule 1);
- the amendment of the names of certain regulations (see item [1] of Schedules 2, 3, 8 & 12);
- the replacement of penalties previously expressed as dollar amounts with the equivalent number of penalty units (for example see item [1] of Schedule 7); and

- the inclusion of penalty provisions which were previously omitted (see item [135] of Schedule 9 and item [18] of Schedule 12). Details of the Regulations are set out in the Attachment. The Regulations commence on gazettal.

## **ATTACHMENT**

### **AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) REGULATIONS 2002 (NO. 1)**

Regulation 1 provides for the name of the regulations to be the Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Regulations 2002 (No. 1).

Regulation 2 provides for the regulations to commence on gazettal.

Regulation 3 provides that Schedule 1 amends the *Agricultural and Veterinary Chemicals Code Regulations 1995*.

Regulation 4 provides that Schedule 2 amends the *Australian Horticultural Corporation (Dried Fruits Export Control) Regulations*.

Regulation 5 provides that Schedule 3 amends the *Australian Horticultural Corporation (Honey Export Control) Regulations*.

Regulation 6 provides that Schedule 4 amends the *Australian Wine and Brandy Corporation Regulations 1981*.

Regulation 7 provides that Schedule 5 amends the *Dairy Adjustment Levy Collection Regulations 2000*.

Regulation 8 provides that Schedule 6 amends the *Export Control (Orders) Regulations 1982*.

Regulation 9 provides that Schedule 7 amends the *Fisheries Management Regulations 1992*.

Regulation 10 provides that Schedule 8 amends the *Meat Inspection (Orders) Regulations*.

Regulation 11 provides that Schedule 9 amends the *Primary Industries Levies and Charges Collection Regulations 1991*.

Regulation 12 provides that Schedule 10 amends the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998*.

Regulation 13 provides that Schedule 11 amends the *Quarantine Regulations 2000*.

Regulation 14 provides that Schedule 12 amends the *Quarantine (Cocos Islands) Regulations*.

Regulation 15 provides that Schedule 13 amends the *Torres Strait Fisheries Regulations 1985*.

## **SCHEDULE 1 - AMENDMENT OF AGRICULTURAL AND VETERINARY CHEMICALS CODE REGULATIONS 1995**

### **Item 1**

This item removes the defence of reasonable excuse from subregulation 35(3) and recreates it in a new subregulation 35(3A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

This item also inserts a new subregulation 35(3B), which specifies that an offence under subregulation 35(3) is an offence of strict liability. Where strict liability applies to an offence the prosecution does not have to prove fault on the part of the defendant. The prosecution need only prove that the physical elements of the offence did occur. A defence of mistake of fact is open to the defendant under section 9.2 of the Criminal Code. This defence is available if a person is under a mistaken but reasonable belief about a fact and, had that fact existed, the conduct would not constitute an offence. Under the Criminal Code, any legislative provision that attracts strict liability must expressly state that it is an offence of strict liability (see section 6.1 of the Code).

### **Items 2 and 3**

These items remove the defence of reasonable excuse from subregulation 46(1) and recreate it in a new subregulation 46(4). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 3 also inserts a new subregulation 46(5), which specifies that an offence under subregulation 46(1) or (3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 4**

This item removes the defence of reasonable excuse from subregulation 47C(1) and recreates it in a new subregulation 47C(1A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

This item also inserts a new subregulation 47C(1B), which specifies that an offence under subregulation 47C(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Item 5**

This item removes the defence of reasonable excuse from subregulation 48(1) and recreates it in an amended subregulation 48(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after amended subregulation referring to the fact that under subsection 13.3(3) of the Criminal Code a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

This item also inserts a new subregulation 48(3), which specifies that an offence under subregulation 48(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Items 6 and 7**

Items 6 and 7 remove the defence of reasonable excuse from the opening line in regulation 49 and recreate it in a new subregulation 49(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the Criminal Code a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 7 also inserts a new subregulation 49(3), which specifies that an offence under subregulation 49(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Items 8 and 9**

These items insert a new subregulation 50(2), which specifies that an offence under subregulation 50(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Items 10 and 11**

These items remove the defence of reasonable excuse from subregulation 51(2) and recreate it in a new subregulation 51 (3). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 11 also inserts a new subregulation 51(4), which specifies that an offence under subregulation 51(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 12**

This item removes the defence of reasonable excuse from subregulation 53(2) and recreates it in a new subregulation 53(3). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 12 also inserts a new subregulation 53(4), which specifies that an offence under subregulation 53 (2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 13**

This item removes the defence of reasonable excuse from subregulation 54(3) and recreates it in a new subregulation 54(4). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 13 also inserts a new subregulation 54(5), which specifies that an offence under subregulation 54(3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 14**

This item removes the defence of reasonable excuse from subregulation 69(3) and recreates it in a new subregulation 69(3A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 14 also inserts a new subregulation 69(3B), which specifies that an offence under subregulation 69(3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **SCHEDULE 2 - AMENDMENT OF AUSTRALIAN HORTICULTURAL CORPORATION (DRIED FRUITS EXPORT CONTROL) REGULATIONS**

### **Item 1**

This item amends regulation 1 by changing the name of the current regulations to the *Australian Horticultural Corporation (Dried Fruits Export Control) Regulations 1991*.

### **Item 2**

This item substitutes at the end of regulation 9 a new note drawing to attention that section 118 of the Act sets out offences for contravening a prohibition in regulation 9.

### **Item 3**

This item replaces a penalty expressed as a dollar amount in regulation 13 with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 4**

This item replaces a penalty expressed as a dollar amount in subregulation 16(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 4 also inserts a new subregulation 16(2), which specifies that for subregulation 16(1), strict liability applies to whether a statement was made, or information supplied, for the purposes of these Regulations. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **SCHEDULE 3 - AMENDMENT OF AUSTRALIAN HORTICULTURAL CORPORATION (HONEY EXPORT CONTROL) REGULATIONS**

### **Item 1**

This item amends regulation 1 by changing the name of the current regulations to the *Australian Horticultural Corporation (Honey Export Control) Regulations 1993*.

### **Item 2**

This item substitutes at the end of regulation 3 a new note drawing to attention that section 118 of the Act sets out offences for contravening a prohibition in regulation 3.

## **SCHEDULE 4 - AMENDMENT OF AUSTRALIAN WINE AND BRANDY CORPORATION REGULATIONS 1981**

### **Item 1**

This item removes the defence of reasonable excuse from subregulation 11(2) and recreates it in a new subregulation 11(2A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as



an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

## **SCHEDULE 5 - AMENDMENT OF DAIRY ADJUSTMENT LEVY COLLECTION REGULATIONS 2000**

### **Item 1**

This item inserts a new subregulation 13(1A), which specifies that for subregulation 13(1), strict liability applies to whether a person is mentioned in subregulation 13(2). An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 2**

This item inserts a new subregulation 14(1A), which specifies that for subregulation 14(1), strict liability applies to whether a person is mentioned in subregulation 13(2). An explanation of strict liability appears under item [1] of Schedule 1, above.

## **SCHEDULE 6 - AMENDMENT OF EXPORT CONTROL (ORDERS) REGULATIONS 1982**

### **Item 1**

This item remakes regulation 4. The new subregulation 4(2) specifies that an offence under subregulation 4(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

The effect of this amendment is that the prosecution will not have to prove fault on the part of the defendant for failing to comply with the Orders. This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

## **SCHEDULE 7 - AMENDMENT OF FISHERIES MANAGEMENT REGULATIONS 1992**

### **Item 1**

This item removes the defence of reasonable excuse from subregulation 12(3) and recreates it in a new subregulation 12(3A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 1 also replaces a penalty expressed as a dollar amount in subregulation 12(3) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

## **Item 2**

This item replaces a penalty expressed as a dollar amount in subregulation 12(4) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

## **Item 3**

This item removes the defence of reasonable excuse from subregulation 12(5) and recreates it in a new subregulation 12(5A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 3 also replaces a penalty expressed as a dollar amount in subregulation 12(5) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

## **Item 4**

This item inserts a new subregulation 12(7), which specifies that an offence under subregulation 12(3), (4) or (5) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 5 and 6**

Item 5 replaces a penalty expressed as a dollar amount in subregulation 13(4) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 6 inserts a new subregulation 13(4A), which specifies that an offence under subregulation 13(4) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 7 and 8**

Items 7 and 8 remove the defence of reasonable excuse from subregulation 14(1) and recreate it in a new subregulation 14(4). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 7 also replaces a penalty expressed as a dollar amount in subregulation 14(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 8 also inserts a new subregulation 14(5), which specifies that an offence under subregulation 14(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 9 and 10**

Items 9 and 10 remove the defence of reasonable excuse from subregulation 15(1) and recreate it in a new subregulation 15(7). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 9 also replaces a penalty expressed as a dollar amount in subregulation 15(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 10 also inserts a new subregulation 15(8), which specifies that an offence under subregulation 15(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 11**

Item 11 removes the defence of reasonable excuse from subregulation 16(1) and recreates it in a new subregulation 16(1 A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 11 also replaces a penalty expressed as a dollar amount in subregulation 16(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 12**

Item 12 inserts a new subregulation 16(5), which specifies that an offence under subregulation 16(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 13**

This item replaces a penalty expressed as a dollar amount in subregulation 17(3) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 14**

This item inserts a new subregulation 17(5), which specifies that an offence under subregulation 17(3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 15, 16 and 17**

Items 15 and 17 remove the defence of reasonable excuse from subregulation 18(6) and recreate it in a new subregulation 18(6A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 16 replaces a penalty expressed as a dollar amount in subregulation 18(6) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 18**

This item replaces a penalty expressed as a dollar amount in subregulation 18(7) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 19**

This item replaces a penalty expressed as a dollar amount in subregulation 18(9) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Items 20 and 21**

Item 20 replaces a penalty expressed as a dollar amount in subregulation 18(10) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 21 inserts a new subregulation 18(11), which specifies that an offence under subregulation 18(6), (7), (9) or (10) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Item 22**

This item replaces a penalty expressed as a dollar amount in subregulation 29(3) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

## **Item 23**

This item removes the defence of reasonable excuse from subregulation 30(1) and recreates it in a new subregulation 30(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

This item also replaces a penalty expressed as a dollar amount in subregulation 30(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 23 also inserts a new subregulation 30(3), which specifies that an offence under subregulation 30(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Item 24**

Item 24 removes the defence of reasonable excuse from subregulations 33(1), (2) and (3) and recreates it in a new subregulation 33(4). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

This item also inserts a new subregulation 33(5), which specifies that an offence under subregulation 33 (1), (2) or (3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

A further amendment made by this item is to remove the defence of reasonable excuse from subregulation 34(1) and 34(2) and recreate it in a new subregulation 34(3). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have

to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 24 also inserts a new subregulation 34(4), which specifies that an offence under subregulation 3 4(1) or (2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 25**

This item replaces a penalty expressed as a dollar amount in subregulation 35(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 26 and 27**

Item 26 replaces a penalty expressed as a dollar amount in subregulation 35(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 27 inserts a new subregulation 35(3), which specifies that an offence under subregulation 35(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 28**

This item replaces a penalty expressed as a dollar amount in subregulation 36(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 29**

This item inserts a standard note after subregulation 36(2) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

### **Item 30**

This item inserts a standard note after subregulation 36(3) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

### **Item 31**

This item replaces a penalty expressed as a dollar amount in regulation 46 with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond

general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 32**

This item removes from subregulation 69(1) the exception for a boat exempted under regulation 71 and recreates the exception in a new subregulation 69(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the exception as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that the defendant bears an evidential burden of proving that the boat concerned is exempted under regulation 71.

Item 32 also inserts a new subregulation 69(3), which specifies that an offence under subregulation 69(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 33 and 34**

Item 33 removes from subregulation 70(1) the exception for a boat exempted under regulation 71 and recreates the exception in a new subregulation 70(1A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the exception as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that the defendant bears an evidential burden of proving that the boat concerned is exempted under regulation 71.

Item 34 inserts a new subregulation 70(3), which specifies that an offence under subregulation 70(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 35**

This item inserts a new subregulation 71(5), which specifies that an offence under subregulation 71(4) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 36**

This item removes from subregulation 73(1) the exception for a boat exempted under regulation 74 and recreates the exception in a new subregulation 73(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the exception as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that the defendant bears an evidential burden of proving that the boat concerned is exempted under regulation 74.

Item 36 also inserts a new subregulation 73(3), which specifies that an offence under subregulation 73(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 37**

This item inserts a new subregulation 74(4), which specifies that an offence under subregulation 74(3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 38**

This item removes from subregulation 76(2) the exception for a boat exempted under regulation 77 and recreates the exception in a new subregulation 76(3A). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the exception as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that the defendant bears an evidential burden of proving that the boat concerned is exempted under regulation 77.

Item 38 inserts a new subregulation 76(4B), which specifies that an offence under subregulation 76(1) or (2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

This item also recasts the existing subregulation 76(3) into a new subregulation 76(5) to make it clear that the matters raised in the existing subregulation 76(3), in relation to the discharge of offal from a boat, are a defence to a prosecution.

### **Item 39**

This item inserts a new subregulation 77(4), which specifies that an offence under subregulation 77(3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **SCHEDULE 8 - AMENDMENT OF MEAT INSPECTION (ORDERS) REGULATIONS**

### **Item 1**

This item amends regulation 1 by changing the name of the current regulations to the *Meat Inspection (Orders) Regulations 1984*.

### **Item 2**

This item replaces a penalty expressed as a dollar amount in subregulation 4(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 2 also inserts a new subregulation 4(2), which specifies that an offence under subregulation 4(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

The effect of this amendment is that the prosecution will not have to prove fault on the part of the defendant for failing to comply with the Orders. This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

## **SCHEDULE 9 - AMENDMENT OF PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION REGULATIONS 1991**

### **Items 1 and 2**



These items insert a new subregulation 12 (2), which specifies that an offence under subregulation 12(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 3**

Item 3 inserts a new subclause 11 (3) in schedule 2, which specifies that an offence under subclause 11 (1) in schedule 2 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 4 and 5**

These items insert a new subclause 10 (2) in schedule 3, which specifies that an offence under subclause 10(1) in schedule 3 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 6**

Item 6 inserts a new subclause 11 (3) in schedule 3, which specifies that an offence under subclause 11 (1) in schedule 3 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 7**

Item 7 inserts a new subclause 10(3) in schedule 4, which specifies that an offence under subclause 10(1) in schedule 4 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 8 and 9**

These items insert a new subclause 11 (2) in schedule 4, which specifies that an offence under subclause 11 (1) in schedule 4 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 10 and 11**

These items insert a new subclause 12(2) in schedule 4, which specifies that an offence under subclause 12(1) in schedule 4 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 12**

Item 12 inserts a new subclause 10(3) in schedule 5, which specifies that an offence under subclause 10(1) in schedule 5 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 13 and 14**

These items insert a new subclause 9(2) in schedule 6, which specifies that an offence under subclause 9(1) in schedule 6 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 15**

Item 15 inserts a new subclause 15(3) in schedule 7, which specifies that an offence under subclause 15(1) or (2) in schedule 7 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 16 and 17**

These items insert a new subclause 16(2) in schedule 7, which specifies that an offence under subclause 16(1) in schedule 7 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 18**

Item 18 inserts a new subclause 17(3) in schedule 7, which specifies that an offence under subclause 17(1) in schedule 7 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 19 and 20**

These items insert a new subclause 18(2) in schedule 7, which specifies that an offence under subclause 18(1) schedule 7 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 21**

Item 21 inserts a new subclause 19(3) in schedule 7, which specifies that an offence under subclause 19(1) in schedule 7 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 22 and 23**

These items insert a new subclause 20(2) in schedule 7, which specifies that an offence under subclause 20(1) in schedule 7 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 24**

This item substitutes a new note 2 to subclause 8(3) of Schedule 8.

### **Item 25**

Item 25 inserts a new subclause 11 (4) in schedule 8, which specifies that an offence under subclause 11 (1), (2) or (3) in schedule 8 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 26 and 27**

These items insert a new subclause 10(2) in schedule 9, which specifies that an offence under subclause 10(1) in schedule 9 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 28 and 29**

These items insert a new subclause 11(2) in schedule 10, which specifies that an offence under subclause 11(1) in schedule 10 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 30 and 31**

These items insert a new subclause 12(2) in schedule 10, which specifies that an offence under subclause 12(1) in schedule 10 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 32 and 33**

These items insert a new clause 10(2) in schedule 11, which specifies that an offence under subclause 10(1) in schedule 11 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 34**

This item substitutes a new note 1 to clause 8 of schedule 12.

### **Items 35 and 36**

These items insert a new subclause 11 (2) in schedule 12, which specifies that an offence under subclause 11 (1) in schedule 12 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 37**

Item 37 inserts a new subclause 13(5A) in schedule 13, which specifies that an offence under subclause 13(1), (2), (3), (4) or (5) in schedule 13 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

Item 38 This item substitutes a new note 2 to clause 7 of Schedule 14.

### **Item 39**

Item 39 inserts a new subclause 10(3) in schedule 14, which specifies that an offence under subclause 10(1) in schedule 14 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 40 and 41**

These items insert a new subclause 18(2) in schedule 15, which specifies that an offence under subclause 18(1) in schedule 15 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 42 and 43**

These items insert a new subclause 18(2) in schedule 16, which specifies that an offence under subclause 18(1) in schedule 16 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 44 and 45**

These items insert a new subclause 4(2) in schedule 17, which specifies that an offence under subclause 4(1) in schedule 17 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Item 46**

Item 46 inserts a new subclause 10(3) in schedule 18, which specifies that an offence under subclause 10(1) or (2) in schedule 18 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Item 47**

This item substitutes a new note 2 to subclause 8(3) of Schedule 19.

#### **Item 48**

Item 48 inserts a new subclause 11 (4) in schedule 19, which specifies that an offence under subclause 11(1), (2) or (3) in schedule 19 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Items 49 and 50**

These items insert a new subclause 12(2) in schedule 20, which specifies that an offence under subclause 12(1) in schedule 20 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Items 51 and 52**

These items insert a new subclause 12(2) in schedule 21, which specifies that an offence under subclause 12(1) in schedule 21 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Item 53**

Item 53 inserts a new subclause 13(3) in schedule 21, which specifies that an offence under subclause 13(1) in schedule 21 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Items 54 and 55**

These items insert a new subclause 14(2) in schedule 21, which specifies that an offence under subclause 14(1) in schedule 21 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

#### **Item 56**

Item 56 inserts a new subclause 16(3) in schedule 21, which specifies that an offence under subclause 16(1) in schedule 21 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 57**

Item 57 inserts a new subclause, 2.9(3) in schedule 22, which specifies that an offence under subclause 2.9(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 58 and 59**

These items insert a new subclause 3.21(2) in schedule 22, which specifies that an offence under subclause 3.21 (1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 60 and 61**

These items insert a new subclause 3.22(2) in schedule 22, which specifies that an offence under subclause 3.22(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 62 and 63**

These items insert a new subclause 3.23(2) in schedule 22, which specifies that an offence under subclause 3.23(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 64 and 65**

These items insert a new subclause 3.24(2) in schedule 22, which specifies that an offence under subclause 3.24(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 66 and 67**

These items insert a new subclause 4.17(2) in schedule 22, which specifies that an offence under subclause 4.17(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 68 and 69**

These items insert a new subclause 4.18(2) in schedule 22, which specifies that an offence under subclause 4.18(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 70 and 71**

These items insert a new subclause 4.19(2) in schedule 22, which specifies that an offence under subclause 4.19(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 72 and 73**

These items insert a new subclause 4.20(2) in schedule 22, which specifies that an offence under subclause 4.20(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 74, 75 and 76**

Items 74 and 75 remove the penalty provision in subclause 5.10(2) in schedule 22 and recreate it at the foot of subclause 5.10(1). This amendment is beyond general authority for harmonising laws with the Criminal Code. Additional policy approval has been given for this amendment.

Item 76 inserts anew subclause 5.10(5) in schedule 22, which specifies that an offence under subclause 5.10(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 77 and 78**

These items insert a new subclause 6.10(2) in schedule 22, which specifies that an offence under subclause 6.10(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 79 and 80**

These items insert a new subclause 6.11(2) in schedule 22, which specifies that an offence under subclause 6.11(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 81 and 82**

These items insert a new subclause 6.12(2) in schedule 22, which specifies that an offence under subclause 6.12(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 83 and 84**

These items insert a new subclause 6.13(2) in schedule 22, which specifies that an offence under subclause 6.13(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 85 and 86**

These items insert a new subclause 6.14(2) in schedule 22, which specifies that an offence under subclause 6.14(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 87 and 88**

These items insert a new subclause 6.15(2) in schedule 22, which specifies that an offence under subclause 6.15(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 89 and 90**

These items insert a new subclause 7.22(2) in schedule 22, which specifies that an offence under subclause 7.22(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 91 and 92**

These items insert a new subclause 7.23(2) in schedule 22, which specifies that an offence under subclause 7.23(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 93 and 94**

These items insert a new subclause 7.24(2) in schedule 22, which specifies that an offence under subclause 7.24(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 95 and 96**

These items insert a new subclause 7.25(2) in schedule 22, which specifies that an offence under subclause 7.25(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Item 97**

Item 97 inserts a new subclause 8.9(4) in schedule 22, which specifies that an offence under subclause 8.9(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 98 and 99**

These items insert a new subclause 9.20(2) in schedule 22, which specifies that an offence under subclause 9.20(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 100 and 101**

These items insert a new subclause 9.21(2) in schedule 22, which specifies that an offence under subclause 9.2 1 (1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 102 and 103**

These items insert a new subclause 9.22(2) in schedule 22, which specifies that an offence under subclause 9.22(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 104 and 105**

These items insert a new subclause 9.23(2) in schedule 22, which specifies that an offence under subclause 9.23(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 106 and 107**

These items insert a new subclause 9.24(2) in schedule 22, which specifies that an offence under subclause 9.24(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 108**

This item substitutes a new note 1 to subclause 10.11(2) of Schedule 22.

### **Item 109**

Item 109 inserts a new subclause 10.13 (5) in schedule 22, which specifies that an offence under subclause 10.13(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 110 and 111**

These items insert a new subclause 10.14(2) in schedule 22, which specifies that an offence under subclause 10.14(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 112**

Item 112 inserts a new subclause 10.15(3) in schedule 22, which specifies that an offence under subclauses 10.15(1) or (2) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 113 and 114**

These items insert a new subclause 11.21(2) in schedule 22, which specifies that an offence under subclause 11.21(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 115 and 116**

These items insert a new subclause 11.22(2) in schedule 22, which specifies that an offence under subclause 11.22(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 117 and 118**

These items insert a new subclause 11.23(2) in schedule 22, which specifies that an offence under subclause 11.23(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 119 and 120**

These items insert a new subclause 11.24(2) in schedule 22, which specifies that an offence under subclause 11.24(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 121**

Item 117 inserts a new subclause 12.10(4) in schedule 22, which specifies that an offence under subclause 12.10(1) or (2) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 122**



Item 122 inserts a new subclause 13.12(3) in schedule 22, which specifies that an offence under subclause 13.12(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 123 and 124**

These items insert a new subclause 14.22(2) in schedule 22, which specifies that an offence under subclause 14.22(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 125 and 126**

These items insert a new subclause 14.23(2) in schedule 22, which specifies that an offence under subclause 14.23(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 127 and 128**

These items insert a new subclause 14.24(2) in schedule 22, which specifies that an offence under subclause 14.24(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 129 and 130**

These items insert a new subclause 14.25(2) in schedule 22, which specifies that an offence under subclause 14.25(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 131**

Item 131 inserts a new subclause 15.18(4) in schedule 22, which specifies that an offence under subclause 15.18(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 132**

Item 132 inserts a new subclause 16.12(4) in schedule 22, which specifies that an offence under subclause 16.12(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 133 and 134**

These items insert a new subclause 16.13(2) in schedule 22, which specifies that an offence under subclause 16.13(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 135**

Item 135 inserts an amended subclause 17.18(1) in schedule 22 to include a penalty provision. This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subclause 17.18(1A) in schedule 22, which specifies that an offence under subclause 17.18(1) in schedule 22 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 136**

Item 136 inserts a new subclause 9(3) in schedule 23, which specifies that an offence under subclause 9(1) in schedule 23 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 137**

Item 137 inserts a new subclause 9(3) in schedule 24, which specifies that an offence under subclause 9(1) in schedule 24 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 138 and 139**

These items insert a new subclause 9(2) in schedule 25, which specifies that an offence under subclause 9(1) in schedule 25 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 140**

Item 140 inserts a new subclause 9(3) in schedule 26, which specifies that an offence under subclause 9(1) in schedule 26 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 141**

Item 141 inserts a new subclause 15(3) in schedule 27, which specifies that an offence under subclause 15(1) or (2) in schedule 27 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 142 and 143**

These items insert a new subclause 16(2) in schedule 27, which specifies that an offence under subclause 16(1) in schedule 27 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 144 and 145**

These items insert a new subclause 17(2) in schedule 27, which specifies that an offence under subclause 17(1) in schedule 27 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 146**

Item 146 inserts a new subclause 18(3) in schedule 27, which specifies that an offence under subclause 18(1) in schedule 27 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 147 and 148**

These items insert a new subclause 19(2) in schedule 27, which specifies that an offence under subclause 19(1) in schedule 27 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 149**

Item 149 inserts a new subclause 9(3) in schedule 28, which specifies that an offence under subclause 9(1) in schedule 28 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 150**

This item substitutes a new note 2 to clause 8 of schedule 29.

### **Item 151**

Item 151 removes a note to subclause 10(4) of schedule 29 referring to penalty provisions in section 24 of the Collections Act.

### **Item 152**

Item 152 inserts a new subclause 11 (4) in schedule 29, which specifies that an offence under subclause 11(1), (2) or (3) in schedule 29 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 153**

This item substitutes a new note 1 to clause 7 of schedule 31.

### **Items 154 and 155**

These items insert a new subclause 10(2) in schedule 31, which specifies that an offence under subclause 10(1) in schedule 31 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 156 and 157**

These items insert a new subclause 11 (2) in schedule 31, which specifies that an offence under subclause 11 (1) in schedule 3 1 is an offence of strict liability. An explanation of strict liability appears under item 11] of Schedule 1, above.

### **Items 158 and 159**

These items insert a new subclause 11(2) schedule 32, which specifies that an offence under subclause 11 (1) in schedule 32 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 160 and 161**

These items insert a new subclause 11 (2) in schedule 33, which specifies that an offence under subclause 11 (1) in schedule 33 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 162**

Item 162 inserts a new subclause 12(3) in schedule 34, which specifies that an offence under subclause 12(1) or (2) in schedule 34 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 163**

Item 163 inserts a new subclause 18 (3) in schedule 35, which specifies that an offence under subclause 18(1) in schedule 35 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 164 and 165**

These items insert a new subclause 12(2) in schedule 36, which specifies that an offence under subclause 12(1) in schedule 36 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 166 and 167**

These items insert a new subclause 1.9(2) in schedule 37, which specifies that an offence under subclause 1.9(1) in schedule 37 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 168 and 169**

These items insert a new subclause 2.23(2) in schedule 37, which specifies that an offence under subclause 2.23(1) in schedule 37 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 170**

Item 170 inserts a new subclause 2.24(4) in schedule 37, which specifies that an offence under subclause 2.24(1) in schedule 37 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 171 and 172**

These items insert a new subclause 2.25(2) in schedule 37, which specifies that an offence under subclause 2.25(1) in schedule 37 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 173 and 174**

These items insert a new subclause 2.26(2) in schedule 37, which specifies that an offence under subclause 2.26(1) in schedule 37 is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 175**

This item substitutes a new note 2 to subclause 3.6(1) of Schedule 37.

### **Item 176**

This item inserts a new note 2 to clause 3.11 of Schedule 37.

### **Item 177**

This item further amends the *Primary Industries Levies and Charges Collection Regulations 1991* by inserting or substituting a note at the end of certain provisions.

## **SCHEDULE 10 - AMENDMENT OF PRIMARY INDUSTRIES LEVIES AND CHARGES (NATIONAL RESIDUE SURVEY LEVIES) REGULATIONS 1998**

### **Items 1 and 2**

These items insert a new subregulation 22(2), which specifies that an offence under subregulation 22(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 3 and 4**

These items insert a new subregulation 66(2), which specifies that an offence under subregulation 66(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 5 and 6**

These items insert a new subregulation 67(2), which specifies that an offence under subregulation 67(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 7**

This item inserts a new subregulation 94(3), which specifies that an offence in subregulation 94(1) or (2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 8 and 9**

These items insert a new subregulation 95(2), which specifies that an offence under subregulation 95(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 10 and 11**

These items insert a new subregulation 122(2), which specifies that an offence in subregulation 122(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 12**

This item substitutes a new note 1 to regulation 142.

### **Item 13**

This item inserts a new subregulation 234(3), which specifies that an offence under subregulation 234(1) or (2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 14 and 15**

These items insert a new subregulation 235(2), which specifies that an offence under subregulation 235(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 16**

This item further amends the *Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998* by inserting or substituting a note at the end of certain provisions.

## **SCHEDULE 11 - AMENDMENT OF QUARANTINE REGULATIONS 2000**

### **Items 1 and 2**

Item 1 replaces "as soon as practicable" with "immediately" in subregulation 15(1). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 2 inserts a new subregulation 15(3), which specifies that an offence under subregulation 15(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 3**

This item inserts a new subregulation 16(5), which specifies that an offence under subregulation 16(2) or (3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 4 and 5**

These items insert a new subregulation 17(2), which specifies that an offence under subregulation 17(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 6**

This item effectively replaces "as soon as practicable" with "immediately" in subregulation 20(2). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 6 also inserts a new subregulation 20(3), which specifies that an offence under subregulation 20(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Item 7**

This item inserts a new subregulation 21(3), which specifies that for subregulations 21(1) and (2), strict liability applies to the question whether information was given or reported to a quarantine officer under regulation 15, 16, 17, 19 or 20. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 8 and 9**

These items insert a new subregulation 23(2), which specifies that an offence subregulation 23(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Item 10**

This item removes from subregulation 27(1) the qualification that a person must not discharge or remove stores or waste from an overseas vessel or overseas installation at a port in Australia or the Cocos Islands "unless the master of the vessel or installation has given the person permission to do so" and recreates the qualification in a new subregulation 27(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the exception as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that the defendant bears the evidential burden of proving that the master of a vessel or installation has given the person permission to discharge or remove stores or waste under regulation 27.

## **Item 11**

This item inserts a new subregulation 28(3), which specifies that an offence under subregulation 28(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **Items 12 and 13**

These items insert a new subregulation 30(2), which specifies that for subregulation 30(1) strict liability applies to the question of whether section 68A of the *Quarantine Act 1908* applies to a vessel or installation. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **SCHEDULE 12 - AMENDMENT OF QUARANTINE (COCOS ISLANDS) REGULATIONS**

### **Item 1**

This item amends regulation 1 by changing the name of the current regulations to the *Quarantine (Cocos Islands) Regulations 1982*.

### **Items 2, 3, 4 and 5**

Items 2, 3 and 4 operate to remove the defence of reasonable excuse from subregulation 4(1) and recreate it in a new subregulation 4(2)(d). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 2 also replaces a penalty expressed as a dollar amount in subregulation 4(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 5 also inserts a new subregulation 4(3), which specifies that the offence under subregulation 4(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 6, 7 and 8**

Item 7 replaces a penalty expressed as a dollar amount in regulation 6 with a penalty unit (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Items 6 and 8 insert a new subregulation 6(2), which specifies that an offence in subregulation 6(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 9**

This item removes the defence of reasonable excuse from subregulations 10(2) and 10(3) and recreates it in a new subregulation 10(5). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation 10(5) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 9 also replaces penalties expressed as a dollar amount in subregulations 10(2), (3) and (4) with a penalty unit (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subregulation 10(6), which specifies that an offence under subregulation 10(2), (3) or (4) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 10**

Item 10 replaces a penalty expressed as a dollar amount in subregulation 12(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

### **Item 11**



This item inserts a new subregulation 12(5), which specifies that an offence under subregulation 12(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 12**

This item removes the defence of reasonable excuse from subregulation 15(2) and recreates it in a new subregulation 15(3). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation 15(3) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 12 also replaces a penalty expressed as a dollar amount in subregulation 15(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subregulation 15(4), which specifies that an offence under subregulation 15 (2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 13**

This item replaces "as soon as practicable" with "immediately" in subregulation 16(1). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 13 removes the defence of reasonable excuse from subregulation 16(2) and recreates it in an amended subregulation 16(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the amended subregulation 16(2) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 13 also replaces a penalty expressed as a dollar amount in subregulation 16(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subregulation 16(3), which specifies that an offence under subregulation 16(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 14**

Item 14 removes the defence of reasonable excuse from subregulation 17(2) and recreates it in an amended subregulation 17(3). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation 17(3) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 14 also replaces a penalty expressed as a dollar amount in subregulation 17(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subregulation 17(4), which specifies that an offence under subregulation 17(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 15**

This item replaces "as soon as practicable" with "immediately" in subregulation 18(1). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 15 also removes the defence of reasonable excuse from subregulation 18(2) and recreates it in an amended subregulation 18(2). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the amended subregulation 18(2) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 15 replaces a penalty expressed as a dollar amount in subregulation 18(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subregulation 18(3), which specifies that an offence under subregulation 18(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 16 and 17**

Item 16 replaces a penalty expressed as a dollar amount in subregulation 23(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 17 inserts a new subregulation 23(2A), which specifies that an offence under subregulation 23(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 18 and 19**

Item 18 inserts a penalty provision at the end of subregulation 24(1). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 19 inserts a new subregulation 24(3), which specifies that an offence under subregulation 24(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 20, 21 and 22**

Item 21 replaces a penalty expressed as a dollar amount in the regulation 27 with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Items 20 and 22 insert a new subregulation 27(2), which specifies that strict liability applies to whether a question was put under the Regulations. An explanation of strict liability appears under item [1] of Schedule 1, above.

## **SCHEDULE 13 - AMENDMENT OF TORRES STRAIT FISHERIES REGULATIONS 1985**

### **Items 1, 2 and 3**

Items 1 and 2 replace penalties expressed as a dollar amount in subregulation 7(3) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). These amendments are beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for the amendments.

Item 3 inserts a new subregulation 7(4), which specifies that an offence in subregulation 7(3) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 4 and 5**

Item 4 replaces a penalty expressed as a dollar amount in subregulation 8(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 5 inserts a new subregulation 8(2A), which specifies that an offence in subregulation 8(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Items 6 and 7**

Item 6 replaces a penalty expressed as a dollar amount in subregulation 9(2) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond

general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

Item 7 inserts a new subregulation 9(3), which specifies that an offence under subregulation 9(2) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 8**

Item 8 replaces a penalty expressed as a dollar amount in subregulation 12(4) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item removes the defence of reasonable excuse from subregulation 12(4) and recreates it in a new subregulation 12(5). The rationale for this amendment is to prevent the provision from being interpreted in such a way as to include the reasonable excuse element of the provision as an element of the offence, which would have to be disproved by the prosecution. The amendment makes it clear that reasonable excuse is a defence to the offence.

A standard note is added after the new subregulation 12(5) referring to the fact that under subsection 13.3(3) of the *Criminal Code* a defendant seeking to rely on the reasonable excuse defence carries an evidential burden.

Item 8 also inserts a new subregulation 12(6), which specifies that an offence under subregulation 12(4) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

### **Item 9**

Item 9 replaces a penalty expressed as a dollar amount in subregulation 13(1) with the equivalent number of penalty units (see section 4AB of the *Crimes Act 1914*). This amendment is beyond general authority for harmonising laws with the *Criminal Code*. Additional policy approval has been given for this amendment.

This item also inserts a new subregulation 13(1A), which specifies that an offence under subregulation 13(1) is an offence of strict liability. An explanation of strict liability appears under item [1] of Schedule 1, above.

Item 9 further inserts a new subregulation 13(1B), which specifies that subregulation 13(1) does not apply in relation to making a record of information, communicating information or producing a logbook in the performance of a duty under, or in relation to, the Act or these Regulations, or in accordance with an order of a court.