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The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Environment Protection (Beverage  
Container Deposit and Recovery  
Scheme) Bill 2009**

**No.     , 2009**

*(Senator Ludlam)*

**A Bill for an Act to provide for environmentally  
sustainable use of resources and best practice in  
waste management by establishing a national  
beverage container deposit and recovery scheme,  
and for related purposes**



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# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	2
3 Objects .....	2
4 Constitutional basis for Act .....	2
5 Application to external Territories .....	2
6 States and Territories are bound .....	2
7 State and Territory laws may operate concurrently .....	2
8 Interpretation .....	3
<b>Part 2—Beverage Container Deposit and Recovery Scheme</b>	5
9 Beverage Container Deposit and Recovery Scheme .....	5
10 Functions of the department in administering Scheme .....	5
11 Beverage container environmental deposit payable by importer or producer of beverage container .....	6
12 Amount of beverage container environmental deposit .....	6
13 When beverage container environmental amount must be paid .....	7
14 Beverage containers must be labelled as refundable .....	7
15 Prescribed labelling requirements .....	7
16 Authorised collection depots .....	8
17 Authorised transfer stations .....	9
18 Offence to claim refund on beverage container purchased outside Australia .....	9
19 Authorised collection depot or authorised transfer station to pay refund .....	11
20 Review of refund amount .....	11
21 Exemption from beverage container environmental deposit .....	12
22 Act does not extend to existing beverage containers .....	13
<b>Part 3—Enforcement</b>	14
<b>Division 1—Civil penalty orders</b>	14
23 Civil penalty provisions .....	14
24 Continuing contraventions .....	14
25 Court may order person to pay pecuniary penalty for contravening civil penalty provision .....	15
26 Contravening a civil penalty provision is not an offence .....	16
27 Persons involved in contravening civil penalty provision .....	16
28 Recovery of a pecuniary penalty .....	16

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<b>Division 2—Infringement notices</b>	17
29 When an infringement notice can be given .....	17
30 Matters to be included in an infringement notice .....	17
31 Amount of penalty .....	18
32 Withdrawal of an infringement notice .....	18
33 Paying the penalty in accordance with the notice.....	19
34 Effect of this Division on civil proceedings .....	19
<b>Division 3—Enforceable undertakings</b>	20
35 Acceptance of undertakings relating to contraventions.....	20
36 Enforcement of undertakings .....	20
<b>Division 4—Liability of chief executive officers of corporations</b>	22
37 Civil penalties for chief executive officers of corporations.....	22
38 Did a chief executive officer take reasonable steps to prevent contravention?.....	22
<b>Part 4—Miscellaneous</b>	24
39 Annual report by Minister .....	24
40 Regulations .....	24



Section 2

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1 **2 Commencement**

2 This Act commences on the day on which it receives the Royal  
3 Assent.

4 **3 Objects**

5 The objects of this Act are to:

- 6 (a) promote the principles of environment protection by  
7 regulating the use, sale and recovery of beverage containers;  
8 and  
9 (b) ensure the environmentally sustainable management and  
10 reuse of used beverage containers; and  
11 (c) support economic recycling options for used beverage  
12 containers.

13 **4 Constitutional basis for Act**

14 This Act relies on:

- 15 (a) the Commonwealth's legislative powers under paragraphs  
16 51(xx), (xxix) and (xxxix) of the Constitution; and  
17 (b) any implied legislative powers of the Commonwealth.

18 **5 Application to external Territories**

19 This Act extends to all the external Territories.

20 **6 States and Territories are bound**

21 This Act binds the Crown in each of its capacities, but does not  
22 make the Crown liable to be prosecuted for an offence.

23 **7 State and Territory laws may operate concurrently**

24 This Act is not intended to exclude or limit the operation of a law  
25 of a State or Territory to the extent that the law is capable of  
26 operating concurrently with this Act.

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## 8 Interpretation

1  
2 In this Act:

3 ***authorised collection depot*** means a premises authorised by the  
4 department under section 16 for the collection of empty beverage  
5 containers.

6 ***authorised transfer station*** means a premises authorised by the  
7 department under section 17 to be an authorised transfer station.

8 ***beverage*** means:

- 9 (a) any carbonated or non-carbonated soft drink, fruit juice or  
10 water; or  
11 (b) any alcoholic drink, including brandy, gin, rum, whisky,  
12 cordials containing spirits, wine, cider, perry, mead, ale,  
13 porter, beer or any other spirituous, malt, vinous or fermented  
14 liquor; or  
15 (c) milk, including animal milk, soy milk or processed milk; or  
16 (d) any other liquid intended for human consumption by drinking  
17 that is prescribed to be a beverage for the purposes of this  
18 Act;

19 but does not include a beverage of a class that is prescribed not to  
20 be a beverage.

21 ***beverage container*** means a container containing a beverage that is  
22 produced for the sale of the beverage in a sealed form to the  
23 consumer, being a container which has a capacity not exceeding 4  
24 litres and is of any of the following types:

- 25 (a) a plastic or glass bottle;  
26 (b) an aluminium or steel can;  
27 (c) a liquid paperboard or composite carton;  
28 (d) a composite container;

29 but does not include a beverage container of a class that is  
30 prescribed not to be a beverage container.

31 ***beverage container environmental deposit*** means the  
32 environmental deposit set out in paragraph 12(a) or prescribed  
33 under paragraph 12(b), as the case may be.

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Section 8

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1            **department** means the Department administered by the Minister  
2            who administers this Act.

3            **import** means import or bring into Australia from another country.

4            **labelled** includes embossed, painted or stamped.

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

7            **refund amount** means 10 cents, or any higher amount prescribed  
8            for the purposes of this definition or following a review conducted  
9            in accordance with section 20.

10          **reverse vending machine** means an automated mechanical device  
11          which accepts one or more types of empty beverage containers by  
12          scanning the label, and issues coins or a redeemable credit slip with  
13          a value not less than the container's refund amount. A reverse  
14          vending machine may sort and process containers mechanically  
15          provided that the entire process is enclosed within the machine.

16          **Scheme** means the Beverage Container Deposit and Recovery  
17          Scheme established by section 9.

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## **Part 2—Beverage Container Deposit and Recovery Scheme**

### **9 Beverage Container Deposit and Recovery Scheme**

This section establishes the Beverage Container Deposit and Recovery Scheme which is to be administered by the department.

### **10 Functions of the department in administering Scheme**

(1) The functions of the department in administering the Scheme are to:

- (a) manage the operation of the Scheme having regard to the objects specified in section 3;
- (b) collect the beverage container environmental deposit under section 13;
- (c) grant exemptions under section 21;
- (d) authorise premises to be authorised collection depots;
- (e) authorise premises to be authorised transfer stations;
- (f) enter into agreements with the operators of authorised collection depots and authorised transfer stations;
- (g) facilitate and promote the Scheme;
- (h) provide grants or other financial incentives to encourage the use of recyclable and reusable containers and the increased use of recycled material from beverage containers;
- (i) provide information and advice to the Minister in relation to the operation of the Scheme.

(2) Without limiting the generality of paragraphs (1)(g) and (h), the department may fund any of the following:

- (a) market creation and support for collected beverage containers and materials;
- (b) financial support for kerbside recycling services (that is, services involving the collection by or on behalf of local government councils and other entities of containers that

Section 11

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- 1                            have been separated for recycling by occupants of residences  
2                            or businesses);
- 3                            (c) further offsetting the collection industry costs for the  
4                            operation of the Scheme;
- 5                            (d) product development to improve the recyclability and  
6                            reusability of beverage containers;
- 7                            (e) other activities and programs connected with recycling which  
8                            the department considers will facilitate environmentally  
9                            sustainable uses of resources and promote best practices in  
10                            waste management.
- 11                            (3) Payments for the purposes of paragraphs (1)(g) and (h) and  
12                            subsection (2) are to be met from funds appropriated by the  
13                            Parliament for those purposes.

14                            **11 Beverage container environmental deposit payable by importer**  
15                            **or producer of beverage container**

16                            Unless an exemption granted under section 21 applies, a person  
17                            who imports a beverage container into Australia or produces a  
18                            beverage container in Australia must pay a beverage container  
19                            environmental deposit for each beverage container in accordance  
20                            with section 13.

21                            Civil penalty:

- 22                            (a) for an individual—2,000 penalty units or such amount as is  
23                            prescribed by the regulations;
- 24                            (b) for a body corporate—10,000 penalty units or such amount  
25                            as is prescribed by the regulations.

26                            Note:            Under section 24 the person may be liable for an additional civil  
27                            penalty for each day after the day mentioned in section 13 for which  
28                            the person fails to comply with this section.

29                            **12 Amount of beverage container environmental deposit**

30                            The amount of the beverage container environmental deposit for  
31                            each beverage container is:

- 32                            (a) 10 cents; or
-

- 1 (b) if the regulations prescribe a higher amount for the purposes  
2 of this section, that amount.

### 3 **13 When beverage container environmental amount must be paid**

4 A person who is required to pay the beverage container  
5 environmental deposit must pay the deposit to the department  
6 within 14 days after the end of the month in which the beverage  
7 container was sold by the person in Australia to a wholesaler,  
8 retailer or individual, or to a producer or distributor of beverages in  
9 beverage containers.

10 Civil penalty:

- 11 (a) for an individual—100 penalty units or such amount as is  
12 prescribed by the regulations;  
13 (b) for a body corporate—500 penalty units or such amount as is  
14 prescribed by the regulations.

### 15 **14 Beverage containers must be labelled as refundable**

16 A person must not sell a beverage container unless the container is  
17 labelled “X refund at an authorised collection depot or transfer  
18 station when sold in Australia”, where “X” is the refund amount.

19 Civil penalty:

- 20 (a) for an individual—100 penalty units or such amount as is  
21 prescribed by the regulations;  
22 (b) for a body corporate—500 penalty units or such amount as is  
23 prescribed by the regulations.

### 24 **15 Prescribed labelling requirements**

25 If any additional labelling requirements are prescribed in relation  
26 to beverage containers, a person must not sell a beverage container  
27 unless the container is labelled in accordance with the relevant  
28 prescribed labelling requirements.

29 Civil penalty:

Section 16

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- 1 (a) for an individual—100 penalty units or such amount as is  
2 prescribed by the regulations;  
3 (b) for a body corporate—500 penalty units or such amount as is  
4 prescribed by the regulations.

5 **16 Authorised collection depots**

- 6 (1) The department may approve a premises to be an authorised  
7 collection depot.
- 8 (2) The department may enter into an agreement with the operator of  
9 an authorised collection depot in respect of the location, operation  
10 and functions of the authorised collection depot.
- 11 (3) Without limiting the generality of subsection (2), an agreement  
12 may include provisions relating to  
13 (a) the delivery of sorted empty beverage containers to an  
14 authorised transfer station;  
15 (b) the payment to the operator of the authorised collection depot  
16 of the refund amount paid by the authorised collection depot;  
17 (c) the payment of any penalty by the operator of the authorised  
18 collection depot for a failure to comply with the agreement.
- 19 (4) Without limiting the types of collection depots that may be  
20 authorised under this section:  
21 (a) collection depots may involve manual or mechanised  
22 handling facilities, including reverse vending machines; and  
23 (b) any of the following may be authorised as collection depots:  
24 (i) council sites;  
25 (ii) community centres and community-based facilities;  
26 (iii) shopping centres and centre car parks;  
27 (iv) service stations or other retailers;  
28 (v) schools;  
29 (vi) drive-through recycling centres;  
30 (vii) authorised transfer stations.

**17 Authorised transfer stations**

- 1
- 2 (1) The department may approve a premises to be an authorised
- 3 transfer station.
- 4 (2) The department may enter into an agreement with the operator of
- 5 an authorised transfer station in respect of the location, operation
- 6 and functions of the authorised transfer station.
- 7 (3) Without limiting the generality of subsection (2), an agreement
- 8 may include provisions relating to:
- 9 (a) the receipt and processing of empty beverage containers;
- 10 (b) the payment to the operator of the authorised transfer station
- 11 of the refund amount paid by the authorised transfer station;
- 12 (c) the sale of processed materials;
- 13 (d) the payment of any penalty by the operator of the authorised
- 14 transfer station for a failure to comply with the agreement;
- 15 (e) the submission of a monthly report to the department on the
- 16 number and types of empty beverage containers received and
- 17 processed.
- 18 (4) At the end of 12 months after the commencement of this Act, an
- 19 agreement entered into under subsection (2) may include, or may
- 20 be amended to include, provisions relating to accepting and paying
- 21 a refund amount on crushed and broken empty beverage containers
- 22 using an estimate of the refund amount payable.

**18 Offence to claim refund on beverage container purchased outside  
Australia**

- 23
- 24
- 25 (1) A person must not present to an authorised collection depot or
- 26 authorised transfer station for the purpose of claiming the refund
- 27 amount a beverage container which the person knows or has reason
- 28 to believe was not purchased in Australia.

29 Civil penalty: 100 penalty units.

- 30 (2) Subject to subsection (3), the operator of an authorised collection
- 31 depot or authorised transfer station may request any person
- 32 presenting a beverage container for the purpose of claiming the
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Section 18

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- 1 refund amount to complete a declaration in the prescribed form  
2 stating that the person has no reason to believe that the beverage  
3 container was not purchased in Australia.
- 4 (3) If within any period of 48 hours a person presents 3000 or more  
5 beverage containers to an authorised collection depot or authorised  
6 transfer station for the purpose of claiming the refund amount, the  
7 operator of the authorised collection depot or authorised transfer  
8 station must request the person to complete the declaration referred  
9 to in subsection (2).
- 10 Civil penalty:
- 11 (a) for an individual—100 penalty units or such amount as is  
12 prescribed by the regulations;
- 13 (b) for a body corporate—500 penalty units or such amount as is  
14 prescribed by the regulations.
- 15 (4) The operator of an authorised collection depot or authorised  
16 transfer station must not pay the refund amount to a person who  
17 has not complied with a request made under subsection (2) or (3).
- 18 Civil penalty:
- 19 (a) for an individual—100 penalty units or such amount as is  
20 prescribed by the regulations;
- 21 (b) for a body corporate—500 penalty units or such amount as is  
22 prescribed by the regulations.
- 23 (5) The operator of an authorised collection depot or authorised  
24 transfer station must:
- 25 (a) keep any declaration made under this section for a period of 3  
26 years after it is made; and
- 27 (b) have the declaration readily available for inspection at any  
28 reasonable time by an authorised officer.
- 29 Civil penalty:
- 30 (a) for an individual—300 penalty units or such amount as is  
31 prescribed by the regulations;
- 32 (b) for a body corporate—1,500 penalty units or such amount as  
33 is prescribed by the regulations.
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**19 Authorised collection depot or authorised transfer station to pay refund**

(1) A person who accepts the return of an unbroken empty beverage container at an authorised collection depot or authorised transfer station must pay the person who returns it the refund amount.

(2) Subject to subsections (3) and (4), the operator of an authorised collection depot must not unreasonably refuse to accept any unbroken empty beverage container labelled in accordance with section 14 that is returned to the authorised collection depot.

**Civil penalty:**

(a) for an individual—300 penalty units or such amount as is prescribed by the regulations;

(b) for a body corporate—1,500 penalty units or such amount as is prescribed by the regulations.

(3) The operator of an authorised collection depot may refuse to accept the return of a beverage container if:

(a) the beverage container is in an unsafe condition; or

(b) the operator has reason to believe that the beverage container was not sold to a wholesaler, retailer or individual, or to a producer or distributor of beverages in beverage containers, in Australia; or

(c) a request to complete a declaration under section 18 in respect of the beverage container has not been complied with.

(4) A reverse vending machine may be operated so as to not accept the return of a beverage container labelled in accordance with section 14 which is returned in a condition which prevents the reverse vending machine from scanning the label.

**20 Review of refund amount**

(1) The Minister must cause a review of the refund amount to be carried out at least once in each period of 5 years after the commencement of this Act.

Section 21

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- 1 (2) The person or persons carrying out that review must have regard to  
2 the minimum refund amount necessary to maintain the appropriate  
3 level of incentive:
- 4 (a) for producers, distributors and consumers of beverages in  
5 beverage containers to reuse or recycle beverage containers;  
6 (b) to ensure high rates of recovery of beverage containers;  
7 (c) to reduce litter and litter-related costs;  
8 (d) to reduce waste, disposal and recycling costs;  
9 (e) to conserve resources.

10 **21 Exemption from beverage container environmental deposit**

- 11 (1) A person may apply to the department in the prescribed form for an  
12 exemption wholly or partly from the requirement to pay the  
13 beverage container environmental deposit under section 11.
- 14 (2) The department must within the prescribed period grant an  
15 exemption under this section if the secretary of the department is  
16 satisfied that the criteria and considerations prescribed for the  
17 purposes of this section apply.
- 18 (3) The department must within the prescribed period advise the  
19 applicant in writing of:
- 20 (a) the decision of the department;  
21 (b) if the department grants the exemption—the terms and  
22 conditions applying to the exemption;  
23 (c) if the department refuses to grant the exemption—the reasons  
24 for refusing to grant the exemption.
- 25 (4) If any of the criteria and considerations prescribed for the purposes  
26 of this section cease to apply, the department:
- 27 (a) may by notice in writing to the holder of the exemption  
28 revoke the exemption granted under this section;  
29 (b) must specify in the notice:
- 30 (i) the reason for revoking the exemption; and  
31 (ii) a reasonable period of time within which the person  
32 must comply with this Act.

1 (5) If an exemption is revoked under subsection (4), the person who  
2 held the exemption must begin to comply with this Act within the  
3 period specified in the notice under subsection (4).

4 Civil penalty:

5 (a) for an individual—2,000 penalty units or such amount as is  
6 prescribed by the regulations;

7 (b) for a body corporate—10,000 penalty units or such amount  
8 as is prescribed by the regulations.

9 Note: Under section 24 the person may be liable for an additional civil  
10 penalty for each day after the day specified in the notice for which the  
11 person fails to comply with this Act in accordance with this section.

## 12 **22 Act does not extend to existing beverage containers**

13 This Act does not apply to beverage containers imported into  
14 Australia or produced in Australia before the commencement of  
15 this Act.

1 **Part 3—Enforcement**

2 **Division 1—Civil penalty orders**

3 **23 Civil penalty provisions**

4 The following are civil penalty provisions for the purposes of this  
5 Act:

- 6 (a) a subsection of this Act (or a section of this Act that is not  
7 divided into subsections) if the words “civil penalty” and one  
8 or more amounts in penalty units are set out at the foot of the  
9 subsection (or section);  
10 (b) a subsection of this Act if another provision of this Act  
11 specifies that the subsection is a civil penalty provision.

12 **24 Continuing contraventions**

13 (1) If an act or thing is required, under a civil penalty provision of this  
14 Act, to be done within a particular period, or before a particular  
15 time, then the obligation to do that act or thing continues (even if  
16 the period has expired or the time has passed) until the act or thing  
17 is done.

18 (2) If, under sections 11 and 13 or under subsection 21(5), an act or  
19 thing is required to be done within a particular period, or before a  
20 particular time, and a person fails to comply with that requirement,  
21 the person is liable for a civil penalty for each day that the person  
22 fails to comply.

23 Civil penalty:

- 24 (a) for an individual—1,000 penalty units per day or such  
25 amount as is prescribed by the regulations;  
26 (b) for a body corporate—5,000 penalty units per day or such  
27 amount as is prescribed by the regulations.

28 (3) To avoid doubt, a person’s failure to comply with such a  
29 requirement on a particular day is taken, for the purposes of this  
30 Act, not to be the same conduct as the person’s failure to comply  
31 with that requirement on a different day.

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1 **25 Court may order person to pay pecuniary penalty for**  
2 **contravening civil penalty provision**

3 *Application for order*

- 4 (1) Within 6 years of a person contravening a civil penalty provision,  
5 the department may apply, on behalf of the Commonwealth, to a  
6 Court for an order that the person pay the Commonwealth a  
7 pecuniary penalty.

8 *Court may order person to pay pecuniary penalty*

- 9 (2) If the Court is satisfied that the person has contravened a civil  
10 penalty provision, the Court may order the person to pay to the  
11 Commonwealth for each contravention the pecuniary penalty that  
12 the Court determines is appropriate.

13 *Maximum pecuniary penalty*

- 14 (3) The pecuniary penalty must not exceed the sum of:  
15 (a) the relevant amount specified for the civil penalty provision;  
16 and  
17 (b) the amount (if any) for which the person is liable under  
18 section 24 at the time the Court makes the order.

19 *Determining amount of pecuniary penalty*

- 20 (4) In determining the pecuniary penalty, the Court must have regard  
21 to all relevant matters, including:  
22 (a) the nature and extent of the contravention; and  
23 (b) the nature and extent of any loss or damage suffered as a  
24 result of the contravention; and  
25 (c) the circumstances in which the contravention took place; and  
26 (d) whether the person has previously been found by the Court in  
27 proceedings under this Act to have engaged in any similar  
28 conduct.

Section 26

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1 *Conduct contravening more than one civil penalty provision*

2 (5) If conduct constitutes a contravention of 2 or more civil penalty  
3 provisions, proceedings may be instituted under this Act against a  
4 person in relation to the contravention of any one or more of those  
5 provisions. However, the person is not liable to more than one  
6 pecuniary penalty under this section in respect of the same  
7 conduct.

8 **26 Contravening a civil penalty provision is not an offence**

9 A contravention of a civil penalty provision is not an offence.

10 **27 Persons involved in contravening civil penalty provision**

11 (1) A person must not:  
12 (a) aid, abet, counsel or procure a contravention of a civil  
13 penalty provision; or  
14 (b) induce (by threats, promises or otherwise) a contravention of  
15 a civil penalty provision; or  
16 (c) be in any way directly or indirectly knowingly concerned in,  
17 or party to, a contravention of a civil penalty provision; or  
18 (d) conspire to contravene a civil penalty provision.  
19 (2) This Division applies to a person who contravenes subsection (1)  
20 in relation to a civil penalty provision as if the person had  
21 contravened the provision.

22 **28 Recovery of a pecuniary penalty**

23 If a Court orders a person to pay a pecuniary penalty:  
24 (a) the penalty is payable to the Commonwealth; and  
25 (b) the Commonwealth may enforce the order as if it were a  
26 judgment of the Court.

1 **Division 2—Infringement notices**

2 **29 When an infringement notice can be given**

- 3 (1) If the secretary of the department has reasonable grounds to believe  
4 that a person has contravened a civil penalty provision, the  
5 department may give to the person an infringement notice relating  
6 to the alleged contravention.
- 7 (2) An infringement notice must be given within 12 months after the  
8 day on which the contravention is alleged to have taken place.
- 9 (3) A single infringement notice may be given to a person in respect  
10 of:  
11 (a) 2 or more alleged contraventions of a civil penalty provision;  
12 and  
13 (b) alleged contraventions of 2 or more civil penalty provisions.  
14 However, the notice must not require the person to pay more than  
15 one penalty in respect of the same conduct.

16 **30 Matters to be included in an infringement notice**

- 17 (1) An infringement notice must:  
18 (a) identify the person to whom the notice is given; and  
19 (b) set out brief details of:  
20 (i) the alleged contravention of the civil penalty provision;  
21 or  
22 (ii) if the infringement notice relates to 2 or more alleged  
23 contraventions of a civil penalty provision or alleged  
24 contraventions of 2 or more civil penalty provisions—  
25 each alleged contravention; and  
26 (c) contain a statement to the effect that proceedings will not be  
27 brought under this Part in relation to the alleged  
28 contravention or contraventions if the penalty specified in the  
29 notice is paid to the department, on behalf of the  
30 Commonwealth, within:  
31 (i) 28 days after the notice is given; or

**Part 3** Enforcement

**Division 2** Infringement notices

**Section 31**

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- 1 (ii) if the Secretary of the department allows a longer  
2 period—that longer period; and  
3 (d) contain a statement to the effect that the person to whom the  
4 notice is given may choose not to pay the penalty and, if the  
5 person does so, proceedings may be brought under this Part  
6 in relation to the alleged contravention or contraventions; and  
7 (e) give an explanation of how payment of the penalty is to be  
8 made; and  
9 (f) set out such other matters (if any) as are specified by the  
10 regulations.

11 Note: For the amount of penalty, see section 31.

- 12 (2) For the purposes of paragraph (1)(b), the brief details must include  
13 the following information in relation to each alleged contravention:  
14 (a) the date of the contravention;  
15 (b) the civil penalty provision that was allegedly contravened.

16 **31 Amount of penalty**

17 The penalty to be specified in an infringement notice relating to a  
18 person's alleged contravention of a civil penalty provision must be  
19 a pecuniary penalty equal to one-fifth of the maximum penalty that  
20 a Court could impose on the person for that contravention.

21 Note: To work out this maximum penalty, see subsection 25(3).

22 **32 Withdrawal of an infringement notice**

- 23 (1) This section applies if an infringement notice is given to a person.  
24 (2) The department may, by written notice given to the person,  
25 withdraw the infringement notice.

26 *Refund of penalty if infringement notice withdrawn*

- 27 (3) If:  
28 (a) the penalty specified in the infringement notice is paid; and  
29 (b) the infringement notice is withdrawn after the penalty is paid;  
30 the Commonwealth is liable to refund the penalty.



1 **Division 3—Enforceable undertakings**

2 **35 Acceptance of undertakings relating to contraventions**

- 3 (1) The secretary of the department may accept any of the following  
4 undertakings given by a person:
- 5 (a) a written undertaking that the person will take specified  
6 action, in order to comply with the provisions of this Act or  
7 the regulations;
  - 8 (b) a written undertaking that the person will refrain from taking  
9 specified action in order to comply with the provisions of this  
10 Act or the regulations;
  - 11 (c) a written undertaking that the person will take specified  
12 action directed towards ensuring that the person:
    - 13 (i) does not commit a contravention of this Act or the  
14 regulations; or
    - 15 (ii) is unlikely to commit a contravention of this Act or the  
16 regulations;  
17 in the future;
  - 18 (d) a written undertaking of a kind specified in regulations made  
19 for the purposes of this paragraph.
- 20 (2) The undertaking must be expressed to be an undertaking under this  
21 section.
- 22 (3) The person may withdraw or vary the undertaking at any time, but  
23 only with the consent of the secretary of the department.
- 24 (4) The secretary of the department may, by written notice given to the  
25 person, cancel the undertaking.
- 26 (5) The undertaking may be published on an appropriate website.

27 **36 Enforcement of undertakings**

- 28 (1) If:
- 29 (a) a person has given an undertaking under section 35; and
  - 30 (b) the undertaking has not been withdrawn or cancelled; and

- 1 (c) the secretary of the department considers that the person has  
2 breached the undertaking;  
3 the secretary of the department may apply to a Court for an order  
4 under subsection (2).
- 5 (2) If the Court is satisfied that the person has breached the  
6 undertaking, the Court may make any or all of the following  
7 orders:
- 8 (a) an order directing the person to comply with the undertaking;  
9 (b) an order directing the person to pay to the department, on  
10 behalf of the Commonwealth, an amount up to the amount of  
11 any financial benefit that the person has obtained directly or  
12 indirectly and that is reasonably attributable to the breach;  
13 (c) any order that the Court considers appropriate directing the  
14 person to compensate any other person who has suffered loss  
15 or damage as a result of the breach;  
16 (d) any other order that the Court considers appropriate.

1 **Division 4—Liability of chief executive officers of**  
2 **corporations**

3 **37 Civil penalties for chief executive officers of corporations**

- 4 (1) If:
- 5 (a) a corporation contravenes a civil penalty provision; and
- 6 (b) a chief executive officer of the corporation knew that, or was
- 7 reckless or negligent as to whether, the contravention would
- 8 occur; and
- 9 (c) the officer was in a position to influence the conduct of the
- 10 corporation in relation to the contravention; and
- 11 (d) the officer failed to take all reasonable steps to prevent the
- 12 contravention;
- 13 the officer contravenes this subsection.
- 14 (2) Subsection (1) is a civil penalty provision.
- 15 (3) Under section 25, a Court may order a person contravening
- 16 subsection (1) to pay a pecuniary penalty not more than the
- 17 pecuniary penalty the Court could order a corporation to pay for
- 18 contravening the civil penalty provision mentioned in
- 19 paragraph (1)(a).

20 **38 Did a chief executive officer take reasonable steps to prevent**  
21 **contravention?**

- 22 (1) For the purposes of section 37, in determining whether a chief
- 23 executive officer of a corporation failed to take all reasonable steps
- 24 to prevent a contravention, a Court is to have regard to:
- 25 (a) what action (if any) the officer took directed towards
- 26 ensuring the following (to the extent that the action is
- 27 relevant to the contravention):
- 28 (i) that the corporation regularly assesses its compliance
- 29 with this Act or the regulations;
- 30 (ii) that the corporation implements any appropriate
- 31 recommendations arising from such an assessment;

- 1 (iii) that the corporation's employees, agents and contractors  
2 have a reasonable knowledge and understanding of the  
3 requirements to comply with this Act and the  
4 regulations in so far as those requirements affect the  
5 employees, agents or contractors concerned; and  
6 (b) what action (if any) the officer took when he or she became  
7 aware that the corporation was contravening this Act or the  
8 regulations.
- 9 (2) This section does not, by implication, limit the generality of  
10 section 37

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## **Part 4—Miscellaneous**

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### **39 Annual report by Minister**

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(1) As soon as practicable after each 30 June, the Minister must cause to be prepared a report on the operation of this Act for the 12 months ending on that 30 June.

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(2) The Minister must cause a copy of a report prepared under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

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### **40 Regulations**

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The Governor-General may make regulations prescribing matters:

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