



# **Migration Amendment (Reform of Employer Sanctions) Act 2013**

**No. 10, 2013**

**An Act to amend the law relating to migration, and  
for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Migration Amendment (Reform of Employer Sanctions) Act 2013

No. 10, 2013

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## An Act to amend the law relating to migration, and for other purposes

[Assented to 14 March 2013]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Migration Amendment (Reform of  
Employer Sanctions) Act 2013*.

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 March 2013
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 June 2013 (see F2013L00788)

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Employer sanctions etc.**

### **Part 1—Amendments**

#### *Migration Act 1958*

##### **1 Subsection 5(1)**

Insert:

*civil penalty order* has the meaning given by subsection 486R(4).

##### **2 Subsection 5(1)**

Insert:

*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

##### **3 Subsection 5(1)**

Insert:

*work-related condition* means a condition:

- (a) prohibiting the holder of a visa from working in Australia; or
- (b) restricting the work that the holder of a visa may do in Australia.

##### **4 Subparagraph 140K(1)(a)(iii)**

Omit “an order for a civil penalty under Part 8D”, substitute “a civil penalty order”.

##### **5 Paragraph 140K(1)(b)**

Repeal the paragraph, substitute:

- (b) the person may be issued with an infringement notice under regulations made for the purposes of section 506A as an alternative to proceedings for a civil penalty order;

##### **6 Subparagraph 140K(2)(a)(ii)**

Omit “an order for a civil penalty under Part 8D”, substitute “a civil penalty order”.

**7 Paragraph 140K(2)(b)**

Repeal the paragraph, substitute:

- (b) the person may be issued with an infringement notice under regulations made for the purposes of section 506A as an alternative to proceedings for a civil penalty order;

**8 Subsections 140Q(1) and (2) (civil penalties)**

Repeal the civil penalties, substitute:

Civil penalty: 60 penalty units.

**9 Section 140R**

Repeal the section.

**10 Subsection 140S(3)**

Omit “civil penalty proceedings”, substitute “proceedings for a civil penalty order”.

**11 Subsection 140S(3)**

Omit “under subsection 486R(6)”, substitute “of a kind referred to in subsection 486S(4)”.

**12 Subsections 140XE(3) and 140XF(3) (civil penalties)**

Repeal the civil penalties, substitute:

Civil penalty: 60 penalty units.

**13 Division 12 of Part 2 (heading)**

Repeal the heading, substitute:

**Division 12—Offences etc. in relation to entry into, and remaining in, Australia**

**14 Subdivision C of Division 12 of Part 2 (heading)**

Repeal the heading, substitute:



**Subdivision C—Offences and civil penalties in relation to work  
by non-citizens**

**15 Subsection 245AA(1)**

After “offences”, insert “, and provides for civil penalties,”.

**16 Subsection 245AA(2)**

Omit “The offences make use of”, substitute “This Subdivision uses”.

**17 Sections 245AB to 245AE**

Repeal the sections, substitute:

**245AB Allowing an unlawful non-citizen to work**

- (1) A person (the *first person*) contravenes this subsection if:
  - (a) the first person allows, or continues to allow, another person (the *worker*) to work; and
  - (b) the worker is an unlawful non-citizen.
- (2) Subsection (1) does not apply if the first person takes reasonable steps at reasonable times to verify that the worker is not an unlawful non-citizen, including (but not limited to) either of the following steps:
  - (a) using a computer system prescribed by the regulations to verify that matter;
  - (b) doing any one or more things prescribed by the regulations.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 2 years imprisonment.

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

- (4) For the purposes of subsection (3), the fault element for paragraph (1)(b) is knowledge or recklessness by the first person.

*Civil penalty provision*

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

Civil penalty: 90 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

- (6) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

**245AC Allowing a lawful non-citizen to work in breach of a work-related condition**

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person allows, or continues to allow, another person (the *worker*) to work; and
  - (b) the worker is a lawful non-citizen; and
  - (c) the worker holds a visa that is subject to a work-related condition; and
  - (d) the worker is in breach of the work-related condition solely because of doing the work referred to in paragraph (a).
- (2) Subsection (1) does not apply if the first person takes reasonable steps at reasonable times to verify that the worker is not in breach of the work-related condition solely because of doing the work referred to in paragraph (1)(a), including (but not limited to) either of the following steps:
- (a) using a computer system prescribed by the regulations to verify that matter;
  - (b) doing any one or more things prescribed by the regulations.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 2 years imprisonment.

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

- (4) For the purposes of subsection (3), the fault element for paragraphs (1)(b), (c) and (d) is knowledge or recklessness by the first person.

*Civil penalty provision*

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

Civil penalty: 90 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

- (6) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

**245AD Aggravated offences if a person allows, or continues to allow, another person to work**

*Allowing an unlawful non-citizen to work*

- (1) A person (the **first person**) commits an offence if:
- (a) the first person allows, or continues to allow, another person (the **worker**) to work; and
  - (b) the worker is an unlawful non-citizen; and
  - (c) the worker is being exploited; and
  - (d) the first person knows of, or is reckless as to, the circumstances mentioned in paragraphs (b) and (c).

Penalty: 5 years imprisonment.

Note: See section 245AH for when a person is being **exploited**.

*Allowing a lawful non-citizen to work in breach of a work-related condition*

- (2) A person (the **first person**) commits an offence if:
- (a) the first person allows, or continues to allow, another person (the **worker**) to work; and
  - (b) the worker is a lawful non-citizen; and
  - (c) the worker holds a visa that is subject to a work-related condition; and

- (d) the worker is in breach of the work-related condition solely because of doing the work referred to in paragraph (a); and
- (e) the worker is being exploited; and
- (f) the first person knows of, or is reckless as to, the circumstances mentioned in paragraphs (b), (c), (d) and (e).

Penalty: 5 years imprisonment.

Note: See section 245AH for when a person is being *exploited*.

### **245AE Referring an unlawful non-citizen for work**

- (1) A person (the *first person*) contravenes this subsection if:
  - (a) the first person operates a service, whether for reward or otherwise, referring other persons to third persons for work; and
  - (b) the first person refers another person (the *prospective worker*) to a third person for work; and
  - (c) at the time of the referral, the prospective worker is an unlawful non-citizen.
- (2) Subsection (1) does not apply if the first person takes reasonable steps at reasonable times before the referral to verify that the prospective worker is not an unlawful non-citizen, including (but not limited to) either of the following steps:
  - (a) using a computer system prescribed by the regulations to verify that matter;
  - (b) doing any one or more things prescribed by the regulations.

#### *Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 2 years imprisonment.

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

- (4) For the purposes of subsection (3), the fault element for paragraph (1)(c) is knowledge or recklessness by the first person.

*Civil penalty provision*

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

Civil penalty: 90 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

- (6) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

**245AEA Referring a lawful non-citizen for work in breach of a work-related condition**

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person operates a service, whether for reward or otherwise, referring other persons to third persons for work; and
  - (b) the first person refers another person (the *prospective worker*) to a third person for work; and
  - (c) at the time of the referral:
    - (i) the prospective worker is a lawful non-citizen; and
    - (ii) the prospective worker holds a visa that is subject to a work-related condition; and
    - (iii) the prospective worker will be in breach of the work-related condition solely because of doing the work in relation to which he or she is referred.
- (2) Subsection (1) does not apply if the first person takes reasonable steps at reasonable times before the referral to verify that the prospective worker will not be in breach of the work-related condition solely because of doing the work in relation to which he or she is referred, including (but not limited to) either of the following steps:
- (a) using a computer system prescribed by the regulations to verify that matter;
  - (b) doing any one or more things prescribed by the regulations.

*Offence*

- (3) A person commits an offence if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 2 years imprisonment.

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

- (4) For the purposes of subsection (3), the fault element for paragraph (1)(c) is knowledge or recklessness by the first person.

*Civil penalty provision*

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

Civil penalty: 90 penalty units.

Note: It is not necessary to prove a person's state of mind in proceedings for a civil penalty order (see section 486ZF).

- (6) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

**245AEB Aggravated offences if a person refers another person to a third person for work**

*Referring an unlawful non-citizen for work*

- (1) A person (the **first person**) commits an offence if:
- (a) the first person operates a service, whether for reward or otherwise, referring other persons to third persons for work; and
  - (b) the first person refers another person (the **prospective worker**) to a third person for work; and
  - (c) at the time of the referral, the prospective worker is an unlawful non-citizen; and
  - (d) the prospective worker will be exploited in doing that work, or any other work, for the third person; and
  - (e) the first person knows of, or is reckless as to, the circumstances mentioned in paragraphs (c) and (d).

Penalty: 5 years imprisonment.

Note: See section 245AH for when a person will be *exploited*.

*Referring a lawful non-citizen for work in breach of a work-related condition*

- (2) A person (the **first person**) commits an offence if:
- (a) the first person operates a service, whether for reward or otherwise, referring other persons to third persons for work; and
  - (b) the first person refers another person (the **prospective worker**) to a third person for work; and
  - (c) at the time of the referral:
    - (i) the prospective worker is a lawful non-citizen; and
    - (ii) the prospective worker holds a visa that is subject to a work-related condition; and
    - (iii) the prospective worker will be in breach of the work-related condition solely because of doing the work in relation to which he or she is referred; and
  - (d) the prospective worker will be exploited in doing the work in relation to which he or she is referred, or in doing any other work, for the third person; and
  - (e) the first person knows of, or is reckless as to, the circumstances mentioned in paragraphs (c) and (d).

Penalty: 5 years imprisonment.

Note: See section 245AH for when a person will be *exploited*.

## **18 After paragraph 245AG(2)(b)**

Insert:

- (ba) the first person participates in an arrangement, or any arrangement included in a series of arrangements, for the performance of work by the second person for:
  - (i) the first person; or
  - (ii) another participant in the arrangement or any such arrangement; or

## **19 At the end of subsection 245AG(2)**

Add:

; or (e) the prescribed circumstances exist.

## 20 Sections 245AJ and 245AK

Repeal the sections, substitute:

### 245AJ Criminal liability of executive officers of bodies corporate

- (1) An executive officer of a body corporate commits an offence if:
  - (a) the body commits an offence (the *work-related offence*) against this Subdivision; and
  - (b) the officer knew that, or was reckless or negligent as to whether, the work-related offence would be committed; and
  - (c) the officer was in a position to influence the conduct of the body in relation to the work-related offence; and
  - (d) the officer failed to take all reasonable steps to prevent the work-related offence being committed.
- (2) An offence against subsection (1) is punishable on conviction by a pecuniary penalty not exceeding one-fifth of the maximum pecuniary penalty that a court could impose on the body corporate for the work-related offence.

#### *Reasonable steps to prevent the offence*

- (3) In determining whether the executive officer of the body corporate failed to take all reasonable steps to prevent the work-related offence being committed by the body, a court must have regard to:
  - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors had a reasonable knowledge and understanding of the requirements to comply with this Subdivision, insofar as those requirements affected the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was committing the work-related offence.
- (4) Subsection (3) does not limit subsection (1).

#### *Definition*

- (5) In this section:

*executive officer* of a body corporate means:

  - (a) a director of the body corporate; or



- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

#### **245AK Civil liability of executive officers of bodies corporate**

- (1) An executive officer of a body corporate contravenes this subsection if:
  - (a) the body contravenes (the *work-related contravention*) a civil penalty provision in this Subdivision; and
  - (b) the officer knew that, or was reckless or negligent as to whether, the work-related contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body in relation to the work-related contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the work-related contravention.

##### *Civil penalty provision*

- (2) An executive officer of a body corporate is liable to a civil penalty if the officer contravenes subsection (1).

Civil penalty:           90 penalty units.

Note:           Section 486ZF (which provides that a person's state of mind does not need to be proven in proceedings for a civil penalty order) does not apply in relation to this subsection.

##### *Reasonable steps to prevent the contravention*

- (3) In determining whether the executive officer of the body corporate failed to take all reasonable steps to prevent the work-related contravention by the body, a court must have regard to:
  - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors had a reasonable knowledge and understanding of the requirements to comply with this Subdivision, insofar as those requirements affected the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was engaging in the work-related contravention.

- (4) Subsection (3) does not limit subsection (1).

*Definitions*

- (5) In this section:

**executive officer** of a body corporate means:

- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

**negligent**: an executive officer of a body corporate is **negligent** as to whether a work-related contravention would occur if the officer's conduct involves:

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) such a high risk that the work-related contravention would occur;

that the conduct merits the imposition of a pecuniary penalty.

**reckless**: an executive officer of a body corporate is **reckless** as to whether a work-related contravention would occur if:

- (a) the officer is aware of a substantial risk that the work-related contravention would occur; and
- (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.

## 245AL Contravening civil penalty provisions

- (1) This section applies if a civil penalty provision in this Subdivision provides that a person contravening another provision of this Subdivision (the **conduct rule provision**) is liable to a civil penalty.
- (2) For the purposes of this Act, the person is taken to contravene the civil penalty provision if the person contravenes the conduct rule provision.

## **245AM Geographical scope of offence and civil penalty provisions**

### *Offences*

- (1) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.

### *Contraventions of civil penalty provisions*

- (2) An order must not be made against a person in civil proceedings relating to a contravention by the person of a civil penalty provision in this Subdivision unless:
- (a) the person's conduct that allegedly contravenes the provision occurs:
    - (i) wholly or partly in Australia; or
    - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
  - (b) the person's conduct that allegedly contravenes the provision occurs wholly outside Australia and, at the time of the alleged contravention, the person is:
    - (i) an Australian citizen; or
    - (ii) a resident of Australia; or
    - (iii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
  - (c) all of the following conditions are satisfied:
    - (i) the person's conduct allegedly contravenes the provision because of section 486ZD (the ***ancillary contravention***);
    - (ii) the conduct occurs wholly outside Australia;
    - (iii) the conduct constituting the primary contravention to which the ancillary contravention relates occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship.

### *Defences relating to contraventions of civil penalty provisions*

- (3) In civil proceedings relating to a primary contravention by a person, it is a defence if:

- (a) the conduct constituting the alleged primary contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (b) the person is neither:
    - (i) an Australian citizen; nor
    - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
  - (c) there is not in force in:
    - (i) the foreign country where the conduct constituting the alleged primary contravention occurs; or
    - (ii) the part of the foreign country where the conduct constituting the alleged primary contravention occurs; a law of that foreign country, or a law of that part of that foreign country, that provides for a pecuniary or criminal penalty for such conduct.
- (4) In civil proceedings relating to a contravention (the **ancillary contravention**) by a person of a civil penalty provision in this Subdivision because of section 486ZD, it is a defence if:
- (a) the conduct constituting the alleged ancillary contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (b) the conduct (the **primary conduct**) constituting the primary contravention to which the ancillary contravention relates occurs, or is intended by the person to occur, wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
  - (c) the person is neither:
    - (i) an Australian citizen; nor
    - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
  - (d) there is not in force in:
    - (i) the foreign country where the primary conduct occurs or is intended by the person to occur; or
    - (ii) the part of the foreign country where the primary conduct occurs or is intended by the person to occur; a law of that foreign country, or a law of that part of that foreign country, that provides for a pecuniary or criminal penalty for the primary conduct.

- (5) A defendant bears an evidential burden in relation to the matter in subsection (3) or (4).

*Attorney-General's consent needed for certain proceedings*

- (6) Civil proceedings relating to a contravention of a civil penalty provision in this Subdivision must not be commenced without the Attorney-General's written consent if:
- (a) the conduct constituting the alleged contravention occurs wholly in a foreign country; and
  - (b) at the time of the alleged contravention, the person alleged to have contravened the provision is neither:
    - (i) an Australian citizen; nor
    - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

*When conduct taken to occur partly in Australia*

- (7) For the purposes of this section, if a person sends a thing, or causes a thing to be sent:
- (a) from a point outside Australia to a point in Australia; or
  - (b) from a point in Australia to a point outside Australia;
- that conduct is taken to have occurred partly in Australia.
- (8) For the purposes of this section, if a person sends, or causes to be sent, an electronic communication:
- (a) from a point outside Australia to a point in Australia; or
  - (b) from a point in Australia to a point outside Australia;
- that conduct is taken to have occurred partly in Australia.

*Definitions*

- (9) In this section:

***Australian aircraft*** has the same meaning as in the *Criminal Code*.

***Australian ship*** has the same meaning as in the *Criminal Code*.

***electronic communication*** has the same meaning as in the *Criminal Code*.

***foreign country*** has the same meaning as in the *Criminal Code*.

*point* has the same meaning as in section 16.2 of the *Criminal Code*.

*primary contravention* means a contravention of a civil penalty provision in this Subdivision other than because of section 486ZD.

*resident of Australia* has the same meaning as in the *Criminal Code*.

### **245AN Charge and trial for an aggravated offence**

- (1) If the prosecution intends to prove an offence against subsection 245AD(1) or (2), the charge must allege that the worker referred to in that subsection has been exploited.
- (2) If the prosecution intends to prove an offence against subsection 245AEB(1) or (2), the charge must allege that the prospective worker referred to in that subsection has been or will be exploited:
  - (a) in doing the work in relation to which the prospective worker was referred; or
  - (b) in doing other work for the person to whom the prospective worker was referred.
- (3) On a trial for an offence against section 245AD, the trier of fact may find the defendant not guilty of that offence but guilty of an offence against section 245AB or 245AC if:
  - (a) the trier of fact is not satisfied that the defendant is guilty of an offence against section 245AD; and
  - (b) the trier of fact is satisfied that the defendant is guilty of an offence against section 245AB or 245AC; and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.
- (4) On a trial for an offence against section 245AEB, the trier of fact may find the defendant not guilty of that offence but guilty of an offence against section 245AE or 245AEA if:
  - (a) the trier of fact is not satisfied that the defendant is guilty of an offence against section 245AEB; and
  - (b) the trier of fact is satisfied that the defendant is guilty of an offence against section 245AE or 245AEA; and
  - (c) the defendant has been accorded procedural fairness in relation to that finding of guilt.

### **245AO Treatment of partnerships**

- (1) This Subdivision, and any other provision of this Act to the extent that it relates to this Subdivision, apply to a partnership as if it were a person, but with the changes set out in this section.
- (2) An offence against this Subdivision that would otherwise be committed by a partnership is taken to have been committed by each partner in the partnership, at the time the offence is committed, who:
  - (a) did the relevant act; or
  - (b) aided, abetted, counselled or procured the relevant act; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act (whether directly or indirectly or whether by any act of the partner).
- (3) A civil penalty provision in this Subdivision that would otherwise be contravened by a partnership is taken to have been contravened by each partner in the partnership, at the time of the conduct constituting the contravention, who:
  - (a) engaged in the conduct; or
  - (b) aided, abetted, counselled or procured the conduct; or
  - (c) was in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act of the partner).

### **245AP Treatment of unincorporated associations**

- (1) This Subdivision, and any other provision of this Act to the extent that it relates to this Subdivision, apply to an unincorporated association as if it were a person, but with the changes set out in this section.
- (2) An offence against this Subdivision that would otherwise be committed by an unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence is committed, who:
  - (a) did the relevant act; or
  - (b) aided, abetted, counselled or procured the relevant act; or
  - (c) was in any way knowingly concerned in, or party to, the relevant act (whether directly or indirectly or whether by any act of the member).

- (3) A civil penalty provision in this Subdivision that would otherwise be contravened by an unincorporated association is taken to have been contravened by each member of the association's committee of management, at the time of the conduct constituting the contravention, who:
- (a) engaged in the conduct; or
  - (b) aided, abetted, counselled or procured the conduct; or
  - (c) was in any way knowingly concerned in, or party to, the conduct (whether directly or indirectly or whether by any act of the member).

**21 At the end of paragraphs 271(1)(a) to (g)**

Add "and".

**22 At the end of subsection 271(1)**

Add:

; and (m) a certificate signed by an officer stating:

- (i) whether or not a specified person used a specified computer system at a specified time, or during a specified period, to obtain information about another specified person; and
- (ii) if the specified computer system was so used—the information about the other specified person that was provided by the system to the user at that time or during that period;

is prima facie evidence of the matters stated in the certificate.

**23 Subsection 271(4) (subparagraph (a)(i) of the definition of *migration proceedings*)**

After "against this Act", insert "or a contravention of a civil penalty provision".

**24 Part 8D**

Repeal the Part, substitute:



## **Part 8D—Civil penalties**

### **Division 1—Obtaining a civil penalty order**

#### **486R Civil penalty orders**

##### *Application for order*

- (1) The Minister may apply to an eligible court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The Minister must make the application within 6 years of the alleged contravention.

##### *Eligible court may order person to pay pecuniary penalty*

- (3) If the eligible court is satisfied that the person has contravened a civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the eligible court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

##### *Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the amount of the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the amount of the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the eligible court must take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and

- (d) whether the Department has taken any administrative action against the person in relation to the conduct constituting the contravention or any similar conduct; and
- (e) whether the person has been issued with an infringement notice under regulations made for the purposes of section 506A in relation to the conduct constituting the contravention or any similar conduct; and
- (f) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

**486S Additional rules relating to the sponsorship civil penalty provisions**

- (1) This section applies if an application for a civil penalty order against a person is made to an eligible court in relation to an alleged contravention of a civil penalty provision in Division 3A of Part 2.

*Engaging in similar conduct*

- (2) For the purposes of subsection 486R(6), the person is taken to have engaged in similar conduct if the person has failed to satisfy a sponsorship obligation that is different from the sponsorship obligation to which the application relates.
- (3) Subsection (2) does not limit the circumstances in which a person may be found to have engaged in similar conduct.

*Order to pay a required amount*

- (4) If, when determining the application, it appears to the eligible court that:
  - (a) an amount of a kind prescribed in the regulations made for purposes of subsection 140S(1) is required to be paid by the person to the Commonwealth, a State or Territory or another person; and
  - (b) the amount remains unpaid after the time for payment; and
  - (c) proceedings to recover the amount have not been brought under section 140S;the court may order that the amount be paid to the Commonwealth, State, Territory or other person (as the case may be).

Note: Section 140S allows a person to bring proceedings to recover an amount owed if the eligible court does not make an order under this subsection.

- (5) If the eligible court makes an order under subsection (4):
- (a) an application may be made under subsection 140SA(1), and an order made under subsection 140SA(2), as if proceedings for a civil penalty order were proceedings under section 140S; and
  - (b) section 140SB applies as if the amount ordered to be paid under subsection (4) of this section were a judgement debt under a judgement of an eligible court under section 140S.

#### **486T Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

#### **486U Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

#### **486V Multiple contraventions**

- (1) An eligible court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.
- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**486W Proceedings may be heard together**

An eligible court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**486X Civil evidence and procedure rules for civil penalty orders**

An eligible court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**486Y Requirement for persons to assist in applications for civil penalty orders**

- (1) A person commits an offence if:
  - (a) the Secretary requests, in writing, the person to give all reasonable assistance in connection with an application for a civil penalty order; and
  - (b) the person fails to comply with the request.

Penalty: 10 penalty units.

- (2) A request under subsection (1) is not a legislative instrument.
- (3) The Secretary can request a person to assist under subsection (1) only if:
  - (a) it appears to the Secretary that the person is unlikely to have:
    - (i) contravened the civil penalty provision to which the application relates; or
    - (ii) committed an offence constituted by the same, or substantially the same, conduct as the conduct to which the application relates; and
  - (b) the Secretary suspects or believes that the person can give information relevant to the application.
- (4) The Secretary cannot request a person to assist under subsection (1) if the person is or has been a lawyer for the person suspected of contravening the civil penalty provision to which the application relates.
- (5) An eligible court may order a person to comply with a request under subsection (1) in a specified way. Only the Secretary may apply to the eligible court for an order under this subsection.

- (6) For the purposes of this section, it does not matter whether the application for the civil penalty order has actually been made.

## **Division 2—Civil proceedings and criminal proceedings**

### **486Z Civil proceedings after criminal proceedings**

An eligible court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### **486ZA Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
- (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the civil penalty order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings are dismissed.

### **486ZB Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

### **486ZC Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

### **Division 3—Miscellaneous**

#### **486ZD Ancillary contravention of civil penalty provisions**

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 486ZF (which provides that a person's state of mind does not need to be proven in proceedings for a civil penalty order) does not apply in relation to this section.

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

#### **486ZE Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:

- (i) considered whether or not facts existed; and
  - (ii) was under a mistaken but reasonable belief about those facts; and
- (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

#### **486ZF State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 245AK(2)), it is not necessary to prove:
- (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 486ZD(1) (which is about ancillary contraventions of civil penalty provisions).
- (3) Subsection (1) of this section does not affect the operation of section 486ZE (which is about mistake of fact).

#### **486ZG Civil double jeopardy**

If a person is ordered to pay a pecuniary penalty for contravening a civil penalty provision in respect of particular conduct, the person

is not liable to a pecuniary penalty under some other provision of a law of the Commonwealth in respect of that conduct.

## **Part 8E—Investigation powers relating to work-related offences and provisions**

### **Division 1—Preliminary**

#### **487A Definitions**

In this Part:

*evidential material* means:

- (a) in relation to a work-related offence:
  - (i) a thing with respect to which the offence has been committed or is reasonably suspected of having been committed; or
  - (ii) a thing that it is reasonably suspected will afford evidence as to the commission of the offence; or
  - (iii) a thing that is reasonably suspected of being intended to be used for the purpose of committing the offence; or
- (b) in relation to a contravention of a work-related provision:
  - (i) a thing with respect to which the provision has been contravened or is reasonably suspected of having been contravened; or
  - (ii) a thing that it is reasonably suspected will afford evidence as to the contravention of the provision; or
  - (iii) a thing that is reasonably suspected of being intended to be used for the purpose of contravening the provision.

*issuing officer* means:

- (a) a magistrate; or
- (b) a Federal Magistrate; or
- (c) a Judge of the Federal Court.

Note: For conferral of powers on an issuing officer, see section 487ZH.

*occupier*, in relation to premises comprising a vehicle or vessel, means the person apparently in charge of the vehicle or vessel.

*person assisting* has the meaning given by section 487H.



**premises** includes the following:

- (a) a structure, building, vehicle or vessel;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

**related provision** means a work-related offence or work-related provision.

**search powers** has the meaning given by sections 487E, 487F and 487G.

**search warrant** means:

- (a) a warrant issued by an issuing officer under section 487ZC;  
or
- (b) a warrant signed by an issuing officer under section 487ZD.

**work-related offence** means:

- (a) an offence against Subdivision C of Division 12 of Part 2; or
- (b) an offence against section 6 of the *Crimes Act 1914* that relates to an offence against that Subdivision; or
- (c) an ancillary offence (within the meaning of the *Criminal Code*) that is, or relates to, an offence against that Subdivision.

**work-related provision** means a civil penalty provision in Subdivision C of Division 12 of Part 2.

## **Division 2—Requiring persons to give information or produce documents**

### **487B Secretary may require a person to give information or produce a document**

- (1) If the Secretary has reason to believe that a person has information or a document that is relevant to:
  - (a) a possible work-related offence; or
  - (b) a possible contravention of a work-related provision;the Secretary may, by written notice given to the person, require the person to give the information, or to produce the document, to an authorised officer.

*Content of notice*

- (2) The notice must:
- (a) specify the period (which must be at least 14 days after the notice is given to the person) within which the person is required to comply with the notice; and
  - (b) specify how the information or document must be given; and
  - (c) set out the effect of subsection (3) and sections 137.1 and 137.2 of the *Criminal Code*.

*Offence*

- (3) A person commits an offence if:
- (a) the person is given a notice under subsection (1); and
  - (b) the person fails to comply with the notice.

Penalty: 30 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

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

- (5) Subsection (3) does not apply to the extent that the person is not capable of complying with the notice.

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

**487C Self-incrimination**

- (1) A person is not excused from giving information or producing a document under section 487B on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
- (a) the information given or document produced; and
  - (b) giving the information or producing the document; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;
- are not admissible in evidence against the individual:
- (d) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code*

that relates to Subdivision C of Division 12 of Part 2 of this Act); or

- (e) in civil proceedings (other than proceedings for a civil penalty order for an alleged contravention of a work-related provision).

### **Division 3—Search warrants**

#### **Subdivision A—Search powers**

##### **487D Authorised officer may enter premises by consent or under a search warrant**

- (1) If an authorised officer reasonably suspects that there may be evidential material on any premises, the authorised officer may:
  - (a) enter the premises; and
  - (b) exercise the search powers.
- (2) However, an authorised officer is not authorised to enter the premises unless:
  - (a) the occupier of the premises has consented to the entry and the authorised officer has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a search warrant.

Note: If entry to the premises is with the occupier's consent, the authorised officer must leave the premises if the consent ceases to have effect (see section 487L).

##### **487E Search powers of authorised officers**

The following are the *search powers* that an authorised officer may exercise in relation to premises under section 487D:

- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the authorised officer reasonably suspects may be on the premises;
- (b) if entry to the premises is under a search warrant:
  - (i) the power to search the premises, and any thing on the premises, for the kind of evidential material specified in the warrant; and

- (ii) the power to seize evidential material of that kind if the authorised officer finds it on the premises;
- (c) the power to inspect, examine, take measurements of, conduct tests on or take samples of evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
- (f) the powers set out in subsections 487F(1) and (2) and section 487G.

#### **487F Powers relating to electronic equipment**

- (1) The *search powers* include the power to operate electronic equipment on the premises if the authorised officer reasonably suspects that:
  - (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it; contains evidential material referred to in paragraph 487E(a) or (b).
- (2) The *search powers* include the following powers in relation to evidential material described in subsection (1) found in the exercise of the power under that subsection:
  - (a) if entry to the premises is under a search warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or

- (ii) is on the premises and the use of which for that purpose has been agreed to in writing by the occupier of the premises;  
and remove the disk, tape or other storage device from the premises.
- (3) An authorised officer may operate electronic equipment as mentioned in subsection (1) or (2) only if the authorised officer reasonably believes that the operation of the equipment can be carried out without damage to the equipment.  
  
Note: For compensation for damage to electronic equipment, see section 487T.
- (4) An authorised officer may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
  - (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

#### **487G Seizing evidence of the contravention of related provisions etc.**

- (1) This section applies if an authorised officer enters premises under a search warrant to search for evidential material.
- (2) The *search powers* include seizing a thing that is not evidential material of the kind specified in the warrant if:
  - (a) in the course of searching for the kind of evidential material specified in the warrant, the authorised officer finds the thing; and
  - (b) the authorised officer reasonably believes that:
    - (i) a related provision has been contravened with respect to the thing; or
    - (ii) the thing is evidence of the contravention of a related provision; or
    - (iii) the thing is intended to be used for the purpose of contravening a related provision; and

- (c) the authorised officer reasonably believes that it is necessary to seize the thing in order to prevent its concealment, loss or destruction.

#### **487H Persons assisting authorised officers**

*Authorised officers may be assisted by other persons*

- (1) An authorised officer may be assisted by other persons in exercising powers or performing functions or duties under this Division, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the authorised officer.

*Powers of a person assisting the authorised officer*

- (2) A person assisting the authorised officer:
  - (a) may enter the premises; and
  - (b) may exercise powers and perform functions and duties under this Division in relation to evidential material; and
  - (c) must do so in accordance with a direction given to the person assisting by the authorised officer.
- (3) A power exercised by a person assisting the authorised officer as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised officer.
- (4) A function or duty performed by a person assisting the authorised officer as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised officer.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

#### **487J Use of force in executing a search warrant**

In executing a search warrant, an authorised officer, or a person assisting an authorised officer, may use such force against things as is necessary and reasonable in the circumstances.

**Subdivision B—Powers of authorised officers to ask questions  
and seek production of documents**

**487K Authorised officer may ask questions and seek production of  
documents**

*Entry with consent*

- (1) If an authorised officer is authorised to enter premises because the occupier of the premises consented to the entry, the authorised officer may ask the occupier to:
  - (a) answer any questions relating to the reasons for the authorised officer entering the premises that are put by the authorised officer; and
  - (b) produce any document relating to the reasons for the authorised officer entering the premises that is requested by the authorised officer.

*Entry under a search warrant*

- (2) If an authorised officer is authorised to enter premises by a search warrant, the authorised officer may require any person on the premises to:
  - (a) answer any questions relating to the reasons for the authorised officer entering the premises that are put by the authorised officer; and
  - (b) produce any document relating to the reasons for the authorised officer entering the premises that is requested by the authorised officer.

*Offence*

- (3) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (2); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

### **Subdivision C—Obligations and incidental powers of authorised officers**

#### **487L Consent**

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 487D(2)(a), an authorised officer must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an authorised officer has entered premises because of the consent of the occupier of the premises, the authorised officer, and any person assisting the authorised officer, must leave the premises if the consent ceases to have effect.

#### **487M Announcement before entry under search warrant**

- (1) Before entering premises under a search warrant, an authorised officer must:
  - (a) announce that he or she is authorised to enter the premises; and
  - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
  - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an authorised officer is not required to comply with subsection (1) if the authorised officer reasonably believes that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the search warrant is not frustrated.
- (3) If:



- (a) an authorised officer does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- the authorised officer must show his or her identity card to the occupier or other person, as soon as practicable after entering the premises.

#### **487N Authorised officer to be in possession of search warrant**

An authorised officer who is executing a search warrant must be in possession of:

- (a) the search warrant issued by the issuing officer under section 487ZC, or a copy of the warrant as so issued; or
- (b) the form of search warrant completed under subsection 487ZD(6), or a copy of the form as so completed.

#### **487P Details of search warrant etc. to be given to occupier**

- (1) An authorised officer must comply with subsection (2) if:
  - (a) a search warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The authorised officer must, as soon as practicable:
  - (a) do one of the following:
    - (i) if the search warrant was issued under section 487ZC—make a copy of the warrant available to the occupier or other person (which need not include the signature of the issuing officer who issued it);
    - (ii) if the search warrant was signed under section 487ZD—make a copy of the form of warrant completed under subsection 487ZD(6) available to the occupier or other person; and
  - (b) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Subdivision D.

**487Q Completing execution of search warrant after temporary cessation**

- (1) This section applies if an authorised officer, and all persons assisting, who are executing a search warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The authorised officer, and persons assisting, may complete the execution of the search warrant if:
  - (a) the warrant is still in force; and
  - (b) the authorised officer and persons assisting are absent from the premises:
    - (i) for not more than 1 hour; or
    - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by an issuing officer under subsection (5); or
    - (iii) for a longer period if the occupier of the premises consents in writing.

*Application for extension in emergency situation*

- (3) An authorised officer, or person assisting, may apply to an issuing officer for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
  - (a) there is an emergency situation; and
  - (b) the authorised officer or person assisting reasonably believes that the authorised officer and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the authorised officer or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

*Extension in emergency situation*

- (5) An issuing officer may extend the period during which the authorised officer and persons assisting may be away from the premises if:
  - (a) an application is made under subsection (3); and

- (b) the issuing officer is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
- (c) the extension would not result in the period ending after the search warrant ceases to be in force.

#### **487R Completing execution of search warrant stopped by court order**

An authorised officer, and any persons assisting, may complete the execution of a search warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

#### **487S Expert assistance to operate electronic equipment**

- (1) This section applies if an authorised officer enters premises under a search warrant.

##### *Securing equipment*

- (2) The authorised officer may do whatever is necessary to secure any electronic equipment that is on premises if the authorised officer reasonably believes that:
  - (a) there is on the premises evidential material of the kind specified in the search warrant; and
  - (b) that evidential material may be accessible by operating the equipment; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) the evidential material may be destroyed, altered or otherwise interfered with, if the authorised officer does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:

- (a) the authorised officer's intention to secure the equipment;  
and
- (b) the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
  - (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 487T.

*Extensions*

- (5) The authorised officer may apply to an issuing officer for an extension of the 24-hour period if the authorised officer reasonably believes that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the authorised officer must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the authorised officer's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Division relating to the issue of search warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24-hour period may be extended more than once.

**487T Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Division:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

- (b) the damage or corruption occurs because:
  - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
  - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:

*damage*, in relation to data, includes damage by erasure of data or addition of other data.

### **Subdivision D—Occupier's rights and responsibilities**

#### **487U Occupier entitled to observe execution of search warrant**

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

**487V Occupier to provide authorised officer with facilities and assistance**

- (1) The occupier of premises to which a search warrant relates, or another person who apparently represents the occupier, must provide:
- (a) an authorised officer executing the warrant; and
  - (b) any person assisting the authorised officer;
- with all reasonable facilities and assistance for the effective exercise of their powers, and the effective performance of their functions and duties.

*Offence*

- (2) A person commits an offence if:
- (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

**Subdivision E—General provisions relating to seizure**

**487W Copies of seized things to be provided**

- (1) This section applies if:
- (a) a search warrant is being executed in relation to premises; and
  - (b) an authorised officer seizes one or more of the following from the premises under this Division:
    - (i) a document, film, computer file or other thing that can be readily copied;
    - (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the search warrant is executed, may request the authorised officer to give a copy of the thing or the information to the occupier or other person.
- (3) The authorised officer must comply with such a request as soon as practicable after the seizure.

- (4) However, the authorised officer is not required to comply with such a request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

#### **487X Receipts for seized things**

- (1) An authorised officer must provide a receipt for a thing that is seized under this Division.
- (2) One receipt may cover 2 or more things that are seized.

#### **487Y Return of seized things**

- (1) The Secretary must take reasonable steps to return a thing seized under this Division when the earliest of the following happens:
- (a) the reason for the thing's seizure no longer exists;
  - (b) it is decided that the thing is not to be used in evidence;
  - (c) the period of 60 days after the thing's seizure ends.

Note: See subsections (2) and (3) for exceptions to this rule.

##### *Exceptions*

- (2) Subsection (1):
- (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing:
    - (i) is forfeited or forfeitable to the Commonwealth; or
    - (ii) is the subject of a dispute as to ownership.
- (3) The Secretary is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the thing may continue to be retained because of an order under section 487Z; or
  - (c) the Commonwealth, the Secretary or an authorised officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of a State or Territory) to retain, destroy, dispose of or otherwise deal with the thing.

*Return of thing*

- (4) A thing that is required to be returned under this section must be returned to the person from whom it was seized (or to the owner if that person is not entitled to possess it).

**487Z Issuing officer may permit a seized thing to be retained**

*Application to retain seized thing*

- (1) The Secretary may apply to an issuing officer for an order permitting the retention of a thing seized under this Division for a further period if proceedings in respect of which the thing may afford evidence have not commenced before the end of:
- (a) 60 days after the seizure; or
  - (b) a period previously specified in an order of an issuing officer under this section.
- (2) Before making the application, the Secretary must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person whom the Secretary believes to have such an interest of the proposed application.

*Order to retain seized thing*

- (3) The issuing officer may order that the thing may continue to be retained for a period specified in the order if the issuing officer is satisfied that it is necessary for the thing to continue to be retained:
- (a) for the purposes of investigating whether:
    - (i) a work-related offence has been committed; or
    - (ii) a work-related provision has been contravened; or
  - (b) to enable evidence of such an offence or contravention to be secured for the purposes of a prosecution or action.
- (4) The period specified must not exceed 3 years.

**487ZA Disposal of seized things**

- (1) The Secretary may dispose of a thing seized under this Division if:
-



- (a) the Secretary has taken reasonable steps to return the thing to a person; and
  - (b) either:
    - (i) the Secretary has been unable to locate the person; or
    - (ii) the person has refused to take possession of the thing.
- (2) The Secretary may dispose of the thing in any manner that he or she thinks appropriate.

#### **487ZB Compensation for acquisition of property**

- (1) If the operation of section 487ZA would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

#### **Subdivision F—Issue of search warrants**

##### **487ZC Issue of search warrants**

###### *Application for search warrant*

- (1) An authorised officer may apply to an issuing officer for a search warrant under this section in relation to premises.

###### *Issue of search warrant*

- (2) The issuing officer may issue the search warrant if the issuing officer is satisfied, by information on oath or affirmation, that there

are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.

- (3) However, the issuing officer must not issue the search warrant unless the authorised officer or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

*Content of search warrant*

- (4) The search warrant must:
- (a) state the work-related offence or offences, or work-related provision or provisions, to which the warrant relates; and
  - (b) describe the premises to which the warrant relates; and
  - (c) state that the warrant is issued under this Subdivision; and
  - (d) specify the kind of evidential material that is to be searched for under the warrant; and
  - (e) state that the evidential material specified, and any other evidential material found in the course of executing the warrant, may be seized under the warrant; and
  - (f) name one or more authorised officers; and
  - (g) authorise the authorised officers named in the warrant:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in this Division in relation to the premises; and
  - (h) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (i) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

**487ZD Search warrants by telephone, fax etc.**

*Application for search warrant*

- (1) An authorised officer may apply to an issuing officer by telephone, fax or other electronic means for a search warrant under section 487ZC in relation to premises:
- (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

- (2) The issuing officer may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the search warrant, the authorised officer must prepare an information of the kind mentioned in subsection 487ZC(2) in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the authorised officer may apply for the warrant before the information is sworn or affirmed.

*Issuing officer may complete and sign search warrant*

- (4) The issuing officer may complete and sign the same search warrant that would have been issued under section 487ZC if the issuing officer is satisfied that there are reasonable grounds for doing so:
  - (a) after considering the terms of the information; and
  - (b) after receiving such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.
- (5) After completing and signing the search warrant, the issuing officer must inform the authorised officer, by telephone, fax or other electronic means, of:
  - (a) the terms of the warrant; and
  - (b) the day on which, and the time at which, the warrant was signed.

*Obligations on authorised officer*

- (6) The authorised officer must then do the following:
  - (a) complete a form of search warrant in the same terms as the warrant completed and signed by the issuing officer;
  - (b) state on the form the following:
    - (i) the name of the issuing officer;
    - (ii) the day on which, and the time at which, the search warrant was signed;
  - (c) send the following to the issuing officer:
    - (i) the form of search warrant completed by the authorised officer;
    - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.

- (7) The authorised officer must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day on which the search warrant ceases to be in force;
  - (b) the day on which the search warrant is executed.

*Issuing officer to attach documents together*

- (8) The issuing officer must attach the documents provided under paragraph (6)(c) to the search warrant signed by the issuing officer.

**487ZE Authority of search warrant**

- (1) A form of search warrant duly completed under subsection 487ZD(6) is authority for the same powers as are authorised by the search warrant signed by the issuing officer under subsection 487ZD(4).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a search warrant under section 487ZD if:
- (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
  - (b) the warrant signed by the issuing officer authorising the exercise of the power is not produced in evidence.

**487ZF Offence relating to search warrants by telephone, fax etc.**

An authorised officer must not:

- (a) state in a document that purports to be a form of search warrant under section 487ZD the name of an issuing officer unless that issuing officer signed the warrant; or
- (b) state on a form of search warrant under that section a matter that, to the authorised officer's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of search warrant under that section that the authorised officer knows departs in a material particular from the terms of a warrant signed by an issuing officer under that section; or

- (d) give to an issuing officer a form of search warrant under that section that is not the form of search warrant that the authorised officer purported to execute.

Penalty: Imprisonment for 2 years.

## **Subdivision G—Identity cards**

### **487ZG Identity cards**

- (1) The Secretary must issue an identity card to an authorised officer for the purposes of this Division.

*Identity card must be carried by authorised officer*

- (2) An authorised officer must carry his or her identity card at all times when exercising powers as an authorised officer under this Division.

*Form of identity card*

- (3) The identity card must:
- (a) be in the form approved by the Secretary; and
  - (b) contain a recent photograph of the authorised officer.

*Offence*

- (4) A person commits an offence if:
- (a) the person has been issued with an identity card under subsection (1); and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Secretary.

Penalty: 1 penalty unit.

- (5) An offence against subsection (4) is an offence of strict liability.

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

- (6) Subsection (4) does not apply if the identity card was lost or destroyed.

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

## **Subdivision H—Powers of issuing officers**

### **487ZH Powers of issuing officers**

#### *Powers conferred personally*

- (1) A power conferred on an issuing officer by this Division is conferred on the issuing officer:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

#### *Powers need not be accepted*

- (2) The issuing officer need not accept the power conferred.

#### *Protection and immunity*

- (3) An issuing officer exercising a power conferred by this Division has the same protection and immunity as if the issuing officer were exercising the power:
  - (a) as the court of which the issuing officer is a member; or
  - (b) as a member of the court of which the issuing officer is a member.

### **25 Subsection 493(1)**

After “regulations”, insert “or for a civil penalty order”.

### **26 Subsection 493(2)**

After “regulations”, insert “or of proceedings for a civil penalty order”.

### **27 Subsection 493(3)**

After “regulations”, insert “or for a civil penalty order”.

### **28 Subsection 493(4)**

After “regulations”, insert “or of proceedings for a civil penalty order”.

### **29 After section 506**

Insert:

**506A Regulations may provide for infringement notices**

- (1) The regulations may provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order against the person.
- (2) The penalty must not exceed one-fifth of the maximum penalty that a court could impose on the person for a contravention of the civil penalty provision.

## Part 2—Application and transitional provisions

### 30 Definitions

In this Part:

*commencement* means the commencement of this Schedule.

*Migration Act* means the *Migration Act 1958*.

### 31 Transitional—regulations

- (1) This item applies to regulations if:
  - (a) the regulations were made for the purposes of section 140R of the Migration Act; and
  - (b) the regulations were in force immediately before commencement.
- (2) The regulations have effect, after commencement, as if they had been made for the purposes of section 506A of that Act, as inserted by this Schedule.

### 32 Application—Part 8D of the Migration Act

Despite the repeal of Part 8D of the Migration Act by this Schedule, that Part continues to apply in relation to the following as if that repeal had not happened:

- (a) an application under subsection 486R(1) or 486U(4) of that Act that was made before commencement if a decision on the application was not made before commencement;
- (b) a requirement under subsection 486U(2) of that Act that was made before commencement if the requirement was not complied with before commencement.

### 33 Application—Part 8E of the Migration Act

Part 8E of the Migration Act, as inserted by this Schedule, applies in relation to a work-related offence that is committed, or allegedly committed, before or after commencement.



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*[Minister's second reading speech made in—  
House of Representatives on 19 September 2012  
Senate on 27 February 2013]*

(163/12)

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