National Greenhouse and Energy Reporting Act 2007

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About this compilation

This compilation

This is a compilation of the *National Greenhouse and Energy Reporting Act 2007* that shows the text of the law as amended and in force on 15 December 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy production and energy consumption, and for other purposes

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act may be cited as the *National Greenhouse and Energy Reporting Act 2007*.

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.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	28 September 2007
2. Sections 3 to 77	The day after this Act receives the Royal Assent.	29 September 2007

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Objects

(1) The first object of this Act is to introduce a single national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations to:

(b) inform government policy formulation and the Australian public; and

(c) meet Australia's international reporting obligations; and

(d) assist Commonwealth, State and Territory government programs and activities; and

(e) avoid the duplication of similar reporting requirements in the States and Territories.

(2) The second object of this Act is to contribute to the achievement of Australia's greenhouse gas emissions reduction targets by ensuring that each of the following outcomes (the ***safeguard outcomes***) are achieved:

(a) net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility;

(b) total net safeguard emissions for all of the financial years between 1 July 2020 and 30 June 2030 do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence;

(c) net safeguard emissions decline to:

(i) no more than 100 million tonnes of carbon dioxide equivalence for the financial year beginning on 1 July 2029; and

(ii) zero for any financial year to begin after 30 June 2049;

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(d) the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 are lower than the past 5-year rolling average safeguard emissions for that financial year;

(e) the responsible emitter for each designated large facility has a material incentive to invest in reducing covered emissions from the operation of the facility;

(f) the competitiveness of trade-exposed industries is appropriately supported as Australia and its regions seize the opportunities of the move to a global net zero economy.

4 Constitutional basis for Act

This Act relies on:

(a) the Commonwealth's legislative powers under paragraphs 51(xi), (xx), (xxix) and (xxxix) of the Constitution; and

(b) any implied legislative powers of the Commonwealth.

5 Act excludes some State and Territory laws

This Act is intended to apply to the exclusion of a law of a State or Territory, or a part of such a law:

(a) that provides for the reporting or disclosure of information related to:

(i) greenhouse gas emissions; or

(ii) greenhouse gas projects; or

(iii) energy consumption; or

(iv) energy production; and

(b) that the regulations provide is a law, or part of a law, to which this subsection applies;

so far as the law, or part of the law, would otherwise apply in relation to a constitutional corporation.

5A Crown to be bound

(1) This Act binds the Crown in each of its capacities.

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(2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Crown.

6 Extension to external Territories

This Act extends to every external Territory.

6A Extension to exclusive economic zone and continental shelf

(1) This Act extends to a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf.

(2) Despite subsection 13AB(1) of the *Seas and Submerged Lands Act 1973*, this Act extends to acts, omissions, matters and things directly or indirectly connected with the exploration of, or exploitation of the natural resources of, the continental shelf in the Greater Sunrise special regime area.

(3) Subsection (2) does not limit subsection (1).

(4) Despite subsections (1) and (2), the safeguard provisions do not apply to a facility in the Greater Sunrise special regime area.

6C Application to foreign ships

This Act does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign ships in:

(a) the territorial sea; or

(b) the exclusive economic zone; or

(c) waters of the continental shelf;

in accordance with the United Nations Convention on the Law of the Sea.

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Division 2—Interpretation

7 Definitions

In this Act:

1 April, when used in the safeguard provisions, means:

(a) if the 1 April concerned is a business day—that 1 April; or

(b) if the 1 April concerned is not a business day—the first business day after that 1 April.

5-year rolling average safeguard emissions, for a financial year, means the amount, in tonnes of carbon dioxide equivalence, that is one fifth of the total amount of safeguard emissions for the 5 previous financial years.

account number, in relation to a Registry account, has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

activity includes:

(a) a condition; or

(b) a circumstance; or

(c) a state of affairs;

relating to:

(d) solid waste; or

(e) carbon capture and storage; or

(f) other storage; or

(g) stockpiling; or

(h) any other matter or thing.

approved by the Regulator means approved by the Regulator, in writing, for the purposes of the provision in which the term occurs.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

associated provisions means the following provisions:

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(a) the provisions of a legislative instrument made under this Act;
(b) the provisions of a legislative instrument made under the regulations;
(c) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as those sections relate to:
  (i) this Act; or
  (ii) a legislative instrument made under this Act; or
  (iii) a legislative instrument made under the regulations.

audit information means information obtained by or on behalf of an audit team leader in the course of carrying out a greenhouse and energy audit.

audit team leader means a registered greenhouse and energy auditor appointed to carry out a greenhouse and energy audit or a safeguard audit.

audit team member, in relation to a greenhouse and energy audit or a safeguard audit, means a person assisting the audit team leader to carry out the audit.

Australian carbon credit unit has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Australia's greenhouse gas emissions reduction targets means:
(a) if:
  (i) Australia's current nationally determined contribution was communicated in accordance with Article 4 of the Paris Agreement in June 2022; and
  (ii) that nationally determined contribution has not been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement;

the greenhouse gas emissions reduction targets set out in paragraphs 10(1)(a) and (b) of the *Climate Change Act 2022*; or

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(b) in any other case—the greenhouse gas emissions reduction targets included in:

(i) Australia's current nationally determined contribution communicated in accordance with Article 4 of the Paris Agreement; or

(ii) if that nationally determined contribution has been adjusted in accordance with paragraph 11 of Article 4 of the Paris Agreement—that nationally determined contribution, as adjusted and in force from time to time.

authorised officer means an officer appointed under section 57.

avoid, in relation to emissions of greenhouse gases, includes reduce or eliminate.

baseline emissions number has the meaning given by section 22XL.

biodiversity audit has the same meaning as in the *Nature Repair Act 2023*.

biodiversity audit report has the same meaning as in the *Nature Repair Act 2023*.

business day means a day that is not:

(a) a Saturday; or

(b) a Sunday; or

(c) a public holiday in the Australian Capital Territory.

business unit has the meaning given by the regulations.

carbon abatement means:

(a) the removal of one or more greenhouse gases from the atmosphere; or

(b) the avoidance of emissions of one or more greenhouse gases.

carbon abatement contract has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

carbon capture and storage means:

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(a) the storage of a greenhouse gas substance in a part of a geological formation; or
(b) the injection of a greenhouse gas substance into a part of a geological formation for the purposes of such storage; or
(c) the capture, compression, processing, offloading, transportation or piped conveyance of a greenhouse gas substance, where the compression, processing, offloading, transportation or piped conveyance is for the purposes of such storage.

An expression used in this definition has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. For this purpose, assume that each reference in the definition of ***greenhouse gas substance*** in section 7 of that Act to a prescribed greenhouse gas were a reference to a greenhouse gas (within the meaning of this Act).

carbon dioxide equivalence, of an amount of greenhouse gas, means the amount of the gas multiplied by a value specified in the regulations in relation to that kind of greenhouse gas.

Chapter 5 body corporate has the same meaning as in the *Corporations Act 2001*.

civil penalty provision has the meaning given by section 29.

Commonwealth Registry account has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

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

consumption, of energy**,** has the meaning given by section 10.

controlling corporation means a constitutional corporation that does not have a holding company incorporated in Australia.

court means:
(a) the Federal Court of Australia; or
(b) the Federal Circuit and Family Court of Australia (Division 2).

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covered emissions has the meaning given by section 22XI.

designated financial year means:

(a) the financial year beginning on 1 July 2012; or

(b) a later financial year.

designated generation facility means a facility that is:

(a) attributable to the industry sector mentioned in item 54 of Schedule 2 to the *National Greenhouse and Energy Reporting Regulations 2008* (which deals with electricity generation); and

(b) not a vertically integrated production process (within the meaning of those regulations).

designated large facility has the meaning given by section 22XJ.

Doha Amendment means the amendments to the Kyoto Protocol that:

(a) were adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, in Decision 1/CMP.8; and

(b) are set out in Annex I to that Decision.

Note 1: The Doha Amendment was adopted in Doha, Qatar, in December 2012.

Note 2: The Doha Amendment could in 2014 be viewed on the United Nations Framework Convention on Climate Change website (http://www.unfccc.int).

electronic notice transmitted to the Regulator has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

eligible offsets project has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

emission of greenhouse gas means:

(a) a scope 1 emission of greenhouse gas; or

(b) a scope 2 emission of greenhouse gas.

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energy, includes fuel, or any other energy commodity, of a kind specified in the regulations.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

ERF audit means:

(a) an audit under section 214 or 215 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or

(b) an audit carried out for the purposes of preparing an audit report prescribed for the purposes of any of the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011*:

(i) paragraph 13(1)(e);

(ii) paragraph 13(1)(ea);

(iii) paragraph 13(1)(eb);

(iv) paragraph 23(1)(d);

(v) paragraph 76(4)(c);

(vi) paragraph 76(4)(ca);

(vii) paragraph 76(4)(cb).

ERF audit report means:

(a) an audit report under section 214 or 215 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or

(b) an audit report prescribed for the purposes of any of the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011*:

(i) paragraph 13(1)(e);

(ii) paragraph 13(1)(ea);

(iii) paragraph 13(1)(eb);

(iv) paragraph 23(1)(d);

(v) paragraph 76(4)(c);

(vi) paragraph 76(4)(ca);

(vii) paragraph 76(4)(cb).

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excess emissions situation has the meaning given by section 22XE.

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.

facility has the meaning given by section 9.

financial control has the meaning given by section 22R.

financial year, when used in the safeguard provisions, means a financial year that began on or after the safeguard commencement day.

foreign country includes a region where:

(a) the region is a colony, territory or protectorate of a foreign country; or

(b) the region is part of a foreign country; or

(c) the region is under the protection of a foreign country; or

(d) a foreign country exercises jurisdiction or control over the region; or

(e) a foreign country is responsible for the region's international relations.

foreign person means any of the following:

(a) an individual who is not ordinarily resident in Australia;

(b) a body corporate that:

(i) is incorporated outside Australia; or

(ii) is an authority of a foreign country;

(c) a corporation sole that:

(i) is incorporated outside Australia; or

(ii) is an authority of a foreign country;

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(d) a body politic of a foreign country;
(e) a trust, where the trustee, or a majority of the trustees, are covered by any or all of the above paragraphs.

Greater Sunrise special regime area has the same meaning as in the *Seas and Submerged Lands Act 1973*.

greenhouse and energy audit means an audit under any of sections 73 to 74C.

greenhouse and energy information means information reported to the Regulator under this Act or the safeguard rules, or information obtained by a person whilst performing duties under this Act, the regulations or the safeguard rules.

greenhouse gas has the meaning given by section 7A.

greenhouse gas project means an activity or series of activities:
(a) designed to remove or reduce the emission of greenhouse gases; and
(b) which meet the requirements specified in the regulations.

group has the meaning given by section 8.

group entity means a corporation that is a member of a controlling corporation's group.

holding company, in relation to a body corporate, is a body corporate of which the first body corporate is a subsidiary.

industry sector has the meaning given by the regulations.

insolvent under administration has the same meaning as in the *Corporations Act 2001*.

international agreement means an agreement whose parties are:
(a) Australia and a foreign country; or
(b) Australia and 2 or more foreign countries.

issue, in relation to a safeguard mechanism credit unit, means issue under section 22XNA.

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joint venture means an unincorporated enterprise carried on by 2 or more persons in common otherwise than in partnership.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, as amended and in force for Australia from time to time.

Note: The Kyoto Protocol is in Australian Treaty Series 2008 No. 2 ([2008] ATS 2) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

local governing body means a local governing body established by or under a law of a State or Territory.

member, in relation to a group, has the meaning given by subsection 8(2).

monitoring period has the meaning given by section 22XG.

natural gas has the meaning given by the regulations.

net emissions number has the meaning given by section 22XK.

net safeguard emissions, for a financial year, means the total amount, in tonnes of carbon dioxide equivalence, of net covered emissions from the operation, during the financial year, of all designated large facilities for the financial year.

non-group entity means a person who is not a member of a controlling corporation's group.

official of the Regulator has the same meaning as in the *Clean Energy Regulator Act 2011*.

offsets, of greenhouse gas emissions, has the meaning given by section 10.

operation, in relation to a facility, includes the subsistence of the facility.

operational control has the meaning given by section 11, 11A, 11B or 11C.

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Paris Agreement means the Paris Agreement, done at Paris on 12 December 2015, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2016 No. 24 ([2016] ATS 24) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

past 5-year rolling average safeguard emissions, for a financial year (the ***current financial year***), means the amount, in tonnes of carbon dioxide equivalence, that is one fifth of the total amount of safeguard emissions for the period of 5 financial years that ended:

(a) if the current financial year ends before 1 July 2027—3 years before the start of the current financial year; or

(b) otherwise—2 years before the start of the current financial year.

person means any of the following:

(a) an individual;

(b) a body corporate;

(c) a trust;

(d) a corporation sole;

(e) a body politic;

(f) a local governing body.

prescribed carbon unit has the meaning given by section 22XM.

production, of energy, has the meaning given by section 10.

reduction, of greenhouse gas emissions, has the meaning given by section 10.

Register means the National Greenhouse and Energy Register maintained under section 16.

registered corporation means a corporation that is registered under this Act.

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registered greenhouse and energy auditor means an individual who is registered in the register of greenhouse and energy auditors kept under section 75A.

registered holder, in relation to a prescribed carbon unit or a relinquishable unit, means the person in whose Registry account there is an entry for the unit.

registered person means a person registered under this Act.

Registry means the Australian National Registry of Emissions Units continued in existence under the *Australian National Registry of Emissions Units Act 2011*.

Registry account has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

Regulator means the Clean Energy Regulator.

relinquishable unit means an Australian carbon credit unit or a safeguard mechanism credit unit.

removal, of greenhouse gas, has the meaning given by section 10.

reporting transfer certificate means a certificate issued under section 22L.

reporting transfer test has the meaning given by section 22J.

responsible emitter has the meaning given by section 22XH.

safeguard audit means an audit carried out for the purposes of preparing an audit report prescribed by safeguard rules made for the purposes of paragraph 22XNA(4)(c) or subsection 22XQ(3).

safeguard audit report means an audit report prescribed by safeguard rules made for the purposes of paragraph 22XNA(4)(c) or subsection 22XQ(3).

safeguard commencement day means the day on which Part 3H commences.

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safeguard emissions, for a financial year, means the total amount, in tonnes of carbon dioxide equivalence, of covered emissions from the operation, during the financial year, of all designated large facilities for the financial year.

safeguard mechanism credit unit means a unit issued under section 22XNA.

safeguard outcome has the meaning given by subsection 3(2).

safeguard provisions means the following provisions:

(a) subsection 3(2);
(b) section 15B;
(c) section 18AA;
(ca) paragraph 18B(3)(ba);
(d) Part 3G;
(e) Part 3H.

safeguard rules means rules made under section 22XS.

scope 1 emission of greenhouse gas has the meaning given by section 10.

scope 2 emission of greenhouse gas has the meaning given by section 10.

Secretary means the Secretary of the Department.

subsidiary has the meaning given by section 46 of the *Corporations Act 2001*.

surrender, in relation to a prescribed carbon unit, means surrender under section 22XN.

trust means a person in the capacity of trustee or, as the case requires, a trust estate.

trustee has the same meaning as in the *Income Tax Assessment Act 1997*.

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trust estate has the same meaning as in the *Income Tax Assessment Act 1997*.

United Nations Convention on the Law of the Sea means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31 ([1994] ATS 31). In 2011, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

unsatisfactory compliance record has the meaning given by section 11D.

warrant (except in paragraph 60(1)(h)) means a warrant issued under section 70.

7A Greenhouse gas

(1) For the purposes of this Act, each of the following is a ***greenhouse gas***:

(a) carbon dioxide;

(b) methane;

(c) nitrous oxide;

(d) sulfur hexafluoride;

(e) a hydrofluorocarbon of a kind specified in the table in subsection (2);

(f) a perfluorocarbon of a kind specified in the table in subsection (3);

(g) a prescribed gas.

Table 1—Hydrofluorocarbons

(2) Table 1 is as follows:

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Hydrofluorocarbons		
Item	**Hydrofluorocarbon**	**Chemical formula**
1	HFC-23	CHF_3
2	HFC-32	CH_2F_2
3	HFC-41	CH_3F
4	HFC-43-10mee	$C_5H_2F_{10}$
5	HFC-125	C_2HF_5
6	HFC-134	$C_2H_2F_4$ (CHF_2CHF_2)
7	HFC-134a	$C_2H_2F_4$ (CH_2FCF_3)
8	HFC-143	$C_2H_3F_3$ (CHF_2CH_2F)
9	HFC-143a	$C_2H_3F_3$ (CF_3CH_3)
10	HFC-152a	$C_2H_4F_2$ (CH_3CHF_2)
11	HFC-227ea	C_3HF_7
12	HFC-236fa	$C_3H_2F_6$
13	HFC-245ca	$C_3H_3F_5$

Table 2—Perfluorocarbons

(3) Table 2 is as follows:

Perfluorocarbons		
Item	**Perfluorocarbon**	**Chemical formula**
1	Perfluoromethane (tetrafluoromethane)	CF_4
2	Perfluoroethane (hexafluoroethane)	C_2F_6
3	Perfluoropropane	C_3F_8
4	Perfluorobutane	C_4F_{10}
5	Perfluorocyclobutane	c-C_4F_8
6	Perfluoropentane	C_5F_{12}
7	Perfluorohexane	C_6F_{14}

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8 Group and members of a group

(1) For the purposes of this Act, a controlling corporation's ***group*** consists of the following entities:

(a) the controlling corporation;

(b) the controlling corporation's subsidiaries covered by subsection (3) (if any).

However, paragraph (b) does not apply if the controlling corporation is not incorporated in Australia.

(2) The ***members*** of the group are the entities mentioned in subsection (1) (other than the controlling corporation's subsidiaries if the controlling corporation is not incorporated in Australia).

(3) A subsidiary of the controlling corporation is covered by this section unless:

(a) the subsidiary is also a subsidiary of another body corporate because the other body corporate meets the requirement in subparagraph 46(a)(i) or (ii) of the *Corporations Act 2001* in relation to the subsidiary; and

(b) the other body corporate is not a member of the group (including by reason of a previous operation of this subsection).

(4) To avoid doubt, a controlling corporation's ***group*** may consist of the controlling corporation alone.

9 Facilities

(1) For the purposes of this Act, a ***facility*** is an activity, or a series of activities (including ancillary activities), that involve greenhouse gas emissions, the production of energy or the consumption of energy and that:

(a) form a single undertaking or enterprise and meet the requirements of the regulations; or

(b) are declared by the Regulator to be a facility under section 54, 54A or 54B.

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(2) Paragraph (1)(a) does not apply if a declaration of a kind referred to in paragraph (1)(b) is in force.

(4) Regulations made for the purposes of paragraph (1)(a) may specify:

(a) the circumstances in which an activity or activities (including ancillary activities) will form part of a single undertaking or enterprise; and

(b) what activities are attributable to particular industry sectors.

10 Emissions, energy production, energy consumption etc.

(1) References in this Act to the following:

(a) ***scope 1 emission*** of greenhouse gas;

(aa) ***scope 2 emission*** of greenhouse gas;

(b) ***reduction*** of greenhouse gas emissions;

(c) ***removal*** of greenhouse gas;

(d) ***offsets*** of greenhouse gas emissions;

(e) ***production*** of energy;

(f) ***consumption*** of energy;

have the meaning specified by the regulations.

(2) Regulations made for the purposes of paragraph (1)(aa) may specify a meaning of scope 2 emission of greenhouse gas that includes emissions related to the consumption of specified kinds of energy.

(3) The Minister may determine, by legislative instrument, methods, or criteria for methods, by which the amounts of the scope 1 emissions, scope 2 emissions, reduction, removal, offsets, production or consumption are to be measured for the purposes of this Act and may specify:

(a) in the case of scope 1 emissions—different methods or criteria for emissions from different sources; and

(b) different methods or criteria depending on the circumstances in which the scope 1 emissions, scope 2 emissions, reduction, removal, offsets, production or consumption occurred; and

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(c) conditions relating to the use of methods determined by the Minister or of methods which meet criteria determined by the Minister; and

(d) rating systems for those methods (including different rating systems for different circumstances); and

(e) the particular rating given to each of those methods.

(4) A determination under subsection (3) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(5) Subsection (4) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(6) If a determination under subsection (3) makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.

(7) Subsection (6) does not apply if the publication would infringe copyright.

(8) A determination under subsection (3) may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

11 Operational control—basic rule

(1) For the purposes of this Act, a person has ***operational control*** over a facility if:

(a) the person has the authority to introduce and implement any or all of the following for the facility:

(i) operating policies;

(ii) health and safety policies;

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(iii) environmental policies;

and meets the requirements of the regulations; or

(b) the Regulator declares the person to have operational control of the facility under section 55 or 55A.

(2) Paragraph (1)(a) does not apply in relation to a facility if a declaration of a kind referred to in paragraph (1)(b) is in force in relation to the facility.

(3) For the purposes of this Act, only one person can have operational control over a facility at any one time.

(4) This section has effect subject to sections 11A, 11B and 11C.

11A Operational control—person with greatest authority

Scope

(1) This section applies if the following conditions are satisfied in relation to a period that is included in, or consists of, a designated financial year:

(a) 2 or more persons could satisfy paragraph 11(1)(a) in relation to a facility throughout the period;

(b) a particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) in relation to the facility throughout the period;

(c) no declaration under section 55 or 55A applies in relation to the facility at any time during the period.

Operational control

(2) The person mentioned in paragraph (1)(b) is taken, for the purposes of this Act, to have ***operational control*** over the facility throughout the period.

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11B Operational control—nominated person

Eligible nomination test

(1) For the purposes of this section, a facility ***passes the eligible nomination test*** at a particular time if:

(a) 2 or more persons (the ***relevant persons***) could satisfy paragraph 11(1)(a) in relation to the facility at that time; and

(b) no particular person has the greatest authority to introduce and implement the policies mentioned in subparagraphs 11(1)(a)(i) and (iii) in relation to the facility at that time; and

(c) no declaration under section 55 or 55A applies in relation to the facility at that time; and

(d) that time occurs in a designated financial year.

Nomination

(2) 2 or more persons may jointly nominate one of them to be the nominated person in relation to a facility throughout the period:

(a) beginning at the start of the day specified in the nomination as the day on which the nomination is to come into force (the ***start day***); and

(b) ending at a later time specified in the nomination.

(3) The nomination must:

(a) be in writing; and

(b) be in a form approved by the Regulator; and

(c) be accompanied by such information as is specified in the regulations; and

(d) be accompanied by such documents (if any) as are specified in the regulations.

(4) If:

(a) any of those persons is a foreign person; and

(b) any of those persons is not a foreign person;

a foreign person cannot be nominated.

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(5) The nomination has no effect unless, at the beginning of the start day:
  (a) the facility passes the eligible nomination test; and
  (b) the nominators are the relevant persons.

(6) The start day may occur before the nomination is made.

(8) If the start day occurs during a particular designated financial year, the nomination must not be made after 31 August next following the designated financial year.

(9) The start day may be later than the day on which the nomination is made, so long as:
  (a) the start day occurs in the same financial year as the day on which the nomination is made; or
  (b) the start day occurs in the financial year next following the financial year in which the nomination is made.

Cancellation of nomination

(10) The Regulator may cancel a nomination that relates to a facility if the Regulator is satisfied that:
  (a) the facility passes the eligible nomination test, but the nominated person is not a relevant person; or
  (b) the facility does not pass the eligible nomination test; or
  (c) the nominated person has become a Chapter 5 body corporate; or
  (d) the nominated person has become an insolvent under administration; or
  (e) the nominated person has an unsatisfactory compliance record.

Note: For ***unsatisfactory compliance record***, see section 11D.

(11) A cancellation of a nomination takes effect on the day specified in the notice of cancellation as the day on which the cancellation is to take effect.

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(12) If the Regulator cancels a nomination, the Regulator must give written notice of the cancellation to each nominator.

Replacement nomination

(13) If:

(a) a nomination (the ***original nomination***) is in force in relation to a facility; and

(b) another nomination is made in relation to the facility;

the other nomination has no effect unless it is expressed to replace the original nomination.

Revocation of nomination

(14) If:

(a) a nomination (the ***original nomination***) is in force in relation to a facility; and

(b) another nomination is made in relation to the facility; and

(c) the other nomination is expressed to replace the original nomination;

the original nomination is taken to have been revoked at the beginning of the start day for the other nomination.

Operational control—nomination made

(15) If:

(a) a nomination is in force in relation to a facility throughout a particular period; and

(b) the facility passes the eligible nomination test at all times during the period;

the nominated person is taken, for the purposes of this Act, to have ***operational control*** of the facility throughout the period.

Operational control—nomination not made

(17) If:

(a) no nomination is in force in relation to a facility at any time during a particular period; and

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(b) the facility passes the eligible nomination test at all times during the period;

each of the relevant persons is taken, for the purposes of this Act, to have ***operational control*** of the facility throughout the period.

Notification

(20) If:

(a) a nomination is in force in relation to a facility; and

(b) the facility ceases to pass the eligible nomination test;

each nominator must, within 30 days after the cessation, notify the cessation to the Regulator unless the cessation has previously been notified to the Regulator.

Civil penalty: 400 penalty units.

Exceptions

(21) A person is not required to comply with subsection (20) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under this Act.

(22) A person is not required to comply with subsection (20) if the facility ceases to pass the eligible nomination test because of the making of a declaration under section 55 or 55A.

Definition

(23) In this section:

nomination means a nomination under subsection (2).

11C Operational control—trust with multiple trustees

Eligible nomination test

(1) For the purposes of this section, a facility ***passes the eligible nomination test*** at a particular time if:

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(a) because of section 11, 11A or 11B, a trust has operational control of the facility at that time; and
(b) at that time, there are 2 or more trustees (the ***relevant trustees***) of the trust; and
(c) no declaration under section 55 or 55A applies in relation to the facility at that time; and
(d) that time occurs in a designated financial year.

Nomination

(2) 2 or more trustees may jointly nominate one of them to be the nominated trustee in relation to a facility throughout the period:
(a) beginning at the start of the day specified in the nomination as the day on which the nomination is to come into force (the ***start day***); and
(b) ending at a later time specified in the nomination.

(3) The nomination must:
(a) be in writing; and
(b) be in a form approved by the Regulator; and
(c) be accompanied by such information as is specified in the regulations; and
(d) be accompanied by such documents (if any) as are specified in the regulations.

(4) If:
(a) any of those trustees is a foreign person; and
(b) any of those trustees is not a foreign person;
a foreign person cannot be nominated.

(5) The nomination has no effect unless, at the beginning of the start day:
(a) the facility passes the eligible nomination test; and
(b) the nominators are the relevant trustees.

(6) The start day may occur before the nomination is made.

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(7) If the start day occurs during a particular designated financial year, the nomination must not be made after 31 August next following the designated financial year.

(8) The start day may be later than the day on which the nomination is made, so long as:

(a) the start day occurs in the same financial year as the day on which the nomination is made; or

(b) the start day occurs in the financial year next following the financial year in which the nomination is made.

Cancellation of nomination

(9) The Regulator may cancel a nomination that relates to a facility if the Regulator is satisfied that:

(a) the facility passes the eligible nomination test, but the nominated trustee is not a relevant trustee; or

(b) the facility does not pass the eligible nomination test; or

(c) the nominated trustee has become a Chapter 5 body corporate; or

(d) the nominated trustee has become an insolvent under administration; or

(e) the nominated trustee has an unsatisfactory compliance record.

Note: For ***unsatisfactory compliance record***, see section 11D.

(10) A cancellation of a nomination takes effect on the day specified in the notice of cancellation as the day on which the cancellation is to take effect.

(11) If the Regulator cancels a nomination, the Regulator must give written notice of the cancellation to each nominator.

Replacement nomination

(12) If:

(a) a nomination (the ***original nomination***) is in force in relation to a facility; and

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(b) another nomination is made in relation to the facility;

the other nomination has no effect unless it is expressed to replace the original nomination.

Revocation of nomination

(13) If:

(a) a nomination (the ***original nomination***) is in force in relation to a facility; and

(b) another nomination is made in relation to the facility; and

(c) the other nomination is expressed to replace the original nomination;

the original nomination is taken to have been revoked at the beginning of the start day for the other nomination.

Operational control—nomination made

(14) If:

(a) a nomination is in force in relation to a facility throughout a particular period; and

(b) the facility passes the eligible nomination test at all times during the period;

the nominated trustee is taken, for the purposes of this Act, to have ***operational control*** of the facility throughout the period.

Operational control—nomination not made

(15) If:

(a) no nomination is in force in relation to a facility at any time during a particular period; and

(b) the facility passes the eligible nomination test at all times during the period;

each relevant trustee is taken, for the purposes of this Act, to have ***operational control*** of the facility throughout the period.

Notification

(16) If:

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(a) a nomination is in force in relation to a facility; and

(b) the facility ceases to pass the eligible nomination test;

each nominator must, within 30 days after the cessation, notify the cessation to the Regulator unless the cessation has previously been notified to the Regulator.

Exceptions

(17) A trustee is not required to comply with subsection (16) if the question of who has operational control of the facility is not relevant (whether directly or indirectly) to a requirement under this Act.

(18) A trustee is not required to comply with subsection (16) if the facility ceases to pass the eligible nomination test because of the making of a declaration under section 55 or 55A.

Definition

(19) In this section:

nomination means a nomination under subsection (2).

11D Unsatisfactory compliance record

(1) For the purposes of this Act, a person has an ***unsatisfactory compliance record*** if, and only if:

(a) at any time during the preceding 5 years, the person has breached a requirement under this Act to provide a report; or

(b) at any time during the preceding 5 years, the person has provided a report under this Act that contains information that is false or misleading in a material particular; or

(d) the following conditions are satisfied:

(i) at any time during the preceding 5 years, a copy of an audit report of a greenhouse and energy audit relating to the person was given to the Regulator under this Act;

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(ii) the report contained an adverse conclusion (within the meaning of the *National Greenhouse and Energy Reporting (Audit) Determination 2009*); or

(e) at any time during the preceding 5 years, the person has breached a civil penalty provision of this Act; or

(f) if the person is a body corporate—at any time during the preceding 5 years, an executive officer of the body corporate has breached a civil penalty provision of this Act; or

(g) both:

(i) at any time during the preceding 5 years, the person has done a particular act; and

(ii) the act is of a kind specified in the regulations; or

(h) both:

(i) at any time during the preceding 5 years, the person has omitted to do a particular act; and

(ii) the omission is of a kind specified in the regulations; or

(i) the person has been convicted of an offence against this Act; or

(j) if the person is a body corporate—an executive officer of the body corporate has been convicted of an offence against this Act.

Spent convictions

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

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Part 2—Registration

Division 1—Applying for registration

Subdivision A—Application by a controlling corporation

12 Applying to register in relation to meeting a threshold

(1) A controlling corporation must apply, in accordance with this section, to be registered under Division 3 if the corporation's group meets one or more of the thresholds under section 13 for a financial year (the ***trigger year***) ending on or after 30 June 2009.

Civil penalty: 2,000 penalty units.

Note: Under section 30 a controlling corporation may be liable for an additional civil penalty for each day that it fails to apply in accordance with subsection (1) of this section.

(2) However, a controlling corporation is not required to make an application under subsection (1) in relation to a financial year if:

(a) the corporation has previously made an application under subsection (1) or (3); and

(b) the corporation was registered under Division 3 because of that application; and

(c) the corporation is registered under Division 3 at the end of that year.

Example: A controlling corporation's trigger year is the financial year ending on 30 June 2009.

During that year, the corporation applies under subsection (1) to be registered under Division 3 and the corporation is so registered.

On 30 June 2010 the corporation is still registered under Division 3. The corporation is not required to make an application under subsection (1) in relation to the financial year ending on 30 June 2010.

(3) A controlling corporation may apply, in accordance with this section, to be registered under Division 3 if an executive officer of the corporation is satisfied that the corporation's group is likely to

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meet one or more of the thresholds under section 13 for a financial year (the ***trigger year***) ending on or after 30 June 2009.

(4) An application under subsection (1) or (3) must be made by 31 August in the financial year after the trigger year.

13 Thresholds

(1) A controlling corporation's group meets a ***threshold*** for a financial year if in that year:

(a) the total amount of greenhouse gases emitted from the operation of facilities under the operational control of entities that are members of the group has a carbon dioxide equivalence of:

(i) if the financial year starts on 1 July 2008—125 kilotonnes or more; or

(ii) if the financial year starts on 1 July 2009—87.5 kilotonnes or more; or

(iii) if the year is a later financial year—50 kilotonnes or more; or

(b) the total amount of energy produced from the operation of facilities under the operational control of entities that are members of the group is:

(i) if the financial year starts on 1 July 2008—500 terajoules or more; or

(ii) if the financial year starts on 1 July 2009—350 terajoules or more; or

(iii) if the year is a later financial year—200 terajoules or more; or

(c) the total amount of energy consumed from the operation of facilities under the operational control of entities that are members of the group is:

(i) if the financial year starts on 1 July 2008—500 terajoules or more; or

(ii) if the financial year starts on 1 July 2009—350 terajoules or more; or

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(iii) if the year is a later financial year—200 terajoules or more; or

(d) an entity that is a member of the group has operational control of a facility the operation of which during the year causes:

(i) emission of greenhouse gases that have a carbon dioxide equivalence of 25 kilotonnes or more; or

(ii) production of energy of 100 terajoules or more; or

(iii) consumption of energy of 100 terajoules or more.

(1A) Subsection (1) does not apply in relation to:

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

unless the Minister has, under subsection 10(3), determined:

(d) methods by which the amounts of the emissions, production or consumption, as the case may be, are to be measured; or

(e) criteria for methods by which the amounts of emissions, production or consumption, as the case may be, are to be measured.

(2) If a group entity has operational control of a facility for a number of, but not all, days in a financial year (the ***control days***), subparagraphs (1)(d)(i) to (iii) have effect as though each threshold were replaced by the amount worked out using the following formula:

$$\text{Amount of the threshold that would otherwise apply} \times \frac{\text{Number of control days}}{\text{Number of days in the year}}$$

Reporting transfer certificate

(3) For the purposes of this section, if a person was the holder of a reporting transfer certificate in relation to a facility on a particular day, the facility is taken not to have been under the operational control of a group entity on that day.

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14 Applying to register in relation to greenhouse gas project

A controlling corporation that is not a registered corporation may apply to be registered under Division 3 if the corporation, or one or more members of the corporation's group, are undertaking or proposing to undertake a greenhouse gas project.

15 Requirements for applications

An application under section 12 or 14 must:

(a) be made to the Regulator; and

(b) identify the controlling corporation; and

(c) contain any other information required by the regulations (which must be information that relates to one or more members of a controlling corporation's group); and

(d) be in the form (if any) specified in the regulations.

Subdivision B—Application by a person who is not a controlling corporation

15B Application by a person who is not a controlling corporation

(1) If:

(a) a person is the responsible emitter for a facility during the whole or a part of a financial year; and

(b) the facility is a designated large facility for the financial year; and

(c) the person is not a controlling corporation;

the person must apply, in accordance with this section, to be registered under this Act.

Note: Under Division 137 of the *Criminal Code*, it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

(2) However, a person is not required to make an application under subsection (1) if the person is registered under this Act at the end of the financial year.

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(3) An application under subsection (1) must be made by 31 August next following the financial year.

(3A) A person may apply, in accordance with this section, to be registered under this Act if:

(a) the person has operational control of a facility of a kind specified in the safeguard rules; and

(b) the person is not a controlling corporation.

(4) An application under subsection (1) or (3A) must:

(a) be made to the Regulator; and

(b) be in a form approved by the Regulator; and

(c) set out the information specified by the safeguard rules for the purposes of this paragraph.

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Division 2—National Greenhouse and Energy Register

16 National Greenhouse and Energy Register

(1) The Regulator is to maintain a register, to be known as the National Greenhouse and Energy Register, that sets out:
  (a) the name of each person registered under this Act; and
  (b) any other matters, specified in the regulations, that relate to the following:
    (i) information included in the application for registration;
    (ii) whether the person has complied with provisions of this Act;
    (iii) information included in a report given by the person under this Act;
    (iv) information that is published under section 24;
    (v) the results of a greenhouse and energy audit carried out in relation to the person;
    (vi) the safeguard provisions.

(2) The National Greenhouse and Energy Register may be maintained by electronic means.

(3) The National Greenhouse and Energy Register may be made available for inspection in any way the Regulator thinks appropriate.

(4) The Regulator must ensure that the National Greenhouse and Energy Register is up-to-date.

(5) The National Greenhouse and Energy Register is not a legislative instrument.

(6) Before the end of 28 February next following each financial year, the Regulator must publish on its website the name of each person registered under this Act at any time during the financial year.

(7) Subsection (6) does not limit subsection (3).

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Division 3—Registration of controlling corporations

17 Registration of corporations

(1) The Regulator must register a corporation under this Division if the corporation has applied for registration under section 12 in accordance with section 15.

(2) The Regulator may register a corporation under this Division if:
  (a) the Regulator is satisfied that section 14 permits the corporation to apply for registration; and
  (b) the corporation has applied for registration in accordance with section 15.

(3) The Regulator must notify the corporation, in writing, of his or her decision on the application.

(3A) The Regulator must register a corporation under this Division if:
  (a) a reporting transfer certificate is issued to the corporation; and
  (b) the corporation is not already registered under this Division.

(4) The corporation is registered under this Division when the Regulator has entered the name of the corporation on the Register.

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Division 4—Registration of other persons

18AA Registration of other persons

(1) The Regulator must register a person under this Act if the person has applied for registration under section 15B.

(2) The Regulator must notify the person, in writing, of the Regulator's decision on the application.

(3) The person is registered under this Act when the Regulator has entered the name of the person on the Register.

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Division 5—Deregistration

18B Deregistration

Deregistration on application

(1) A registered person may apply to the Regulator to be deregistered.

(2) An application must:
  (a) be in writing; and
  (b) be in a form approved by the Regulator; and
  (c) set out such information as is specified in the regulations.

(3) The Regulator must remove the person's name from the Register if the Regulator is satisfied that:
  (a) in a case where the person is the controlling corporation of a group—the group is not likely to meet any of the thresholds under section 13 for:
    (i) the financial year in which the application is made; and
    (ii) the next 2 financial years; and
  (b) if the person was registered under section 18AA—the person is not likely to be required to give a report to the Regulator under section 22XB at any time during the next 4 financial years; and
  (ba) if the person has been issued safeguard mechanism credit units—the person has complied with any requirements specified in the safeguard rules for the purposes of this paragraph; and
  (c) the person does not hold a reporting transfer certificate; and
  (d) the person has complied with the person's obligations under this Act.

(4) The Regulator must notify the person, in writing, of the Regulator's decision on the application.

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Deregistration on the Regulator's own initiative

(5) The Regulator may remove a person's name from the Register if the Regulator is satisfied that the person has ceased to exist.

When registration ceases

(6) A person ceases to be registered under this Act when the Regulator has removed the person's name from the Register.

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Part 3—Reporting obligations of registered corporations etc.

19 Report to be given to the Regulator

(1) A corporation registered under Division 3 of Part 2 must, in accordance with this section and in respect of each financial year mentioned in subsection (2), provide a report to the Regulator relating to the:

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

from the operation of facilities under the operational control of the corporation and entities that are members of the corporation's group, during that financial year.

Civil penalty: 2,000 penalty units.

Note 1: Under Division 137 of the *Criminal Code* it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

Note 2: Under section 20 the Regulator may determine that a person other than the registered corporation provide information required by this section.

Note 3: Under section 30 a controlling corporation may be liable for an additional civil penalty for each day on and after the end of the period mentioned in paragraph (6)(d) for which it fails to provide a report in accordance with this section.

Note 3A: Reports under this section and section 22G may be set out in the same document—see subsection 22G(6).

(1A) Subsection (1) does not apply to:

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

unless the Minister has, under subsection 10(3), determined:

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(d) methods by which the amounts of the emissions, production or consumption, as the case may be, are to be measured; or

(e) criteria for methods by which the amounts of emissions, production or consumption, as the case may be, are to be measured.

Note: Paragraph (6)(b) requires that a report under subsection (1) must be based on methods, or methods which meet criteria, determined under subsection 10(3).

(2) A report under subsection (1) is required for:

(a) the corporation's trigger year (within the meaning of subsection 12(1) or (3)); and

(b) any financial year in which the corporation is registered at the end of that year.

(3) If the corporation or a member of its group has operational control over a facility for part of a financial year, the report under subsection (1) in relation to that facility for that year need only relate to the:

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption; and

from the operation of the facility during the part of that year.

(5A) For the purposes of this section, if a person was the holder of a reporting transfer certificate in relation to a facility on a particular day, the facility is taken not to have been under the operational control of a member of the corporation's group on that day.

(6) A report or part of a report under this section must:

(a) be given in a manner and form approved by the Regulator; and

(b) be based on methods determined by the Minister under subsection 10(3), or methods which meet criteria determined by the Minister under that subsection, where the use of those methods satisfies any conditions specified in the determination under that subsection; and

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(c) set out the information specified by the regulations for the purposes of this paragraph; and

(d) be given to the Regulator before the end of 4 months after the end of the financial year.

(7) Regulations made for the purposes of paragraph (6)(c) may specify different requirements for different circumstances.

(8) In particular, and without limiting subsection (7), the regulations may specify different requirements for registered corporations that:

(a) do not meet any threshold; or

(b) do not meet specified thresholds;

for a financial year to which a report relates.

(9) Regulations made for the purposes of paragraph (6)(c) may also specify information that a State or Territory has requested the Regulator to collect.

(10) This section does not apply to a facility that was under the operational control of a member of the corporation's group during the whole or a part of a financial year if the member is required to provide a report under section 22X about the facility in respect of the year.

20 Liability of other persons to provide certain information

(1) Section 19 does not require a registered corporation to include in a report under that section information of a kind that the Regulator determines under subsection (3) is to be provided by another person.

(2) The registered corporation or the other person may apply, in the manner and form specified in the regulations, to the Regulator for a determination under subsection (3).

(3) The Regulator may, if satisfied that:

(a) information that the registered corporation would, but for this section, be required to include in a report under section 19 is information that:

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(i) is not in the possession or under the control of the registered corporation; and

(ii) is in the possession or under the control of another person with whom the registered corporation, or a member of the corporation's group, has a contractual relationship; and

(b) the registered corporation:

(i) is not entitled to acquire the information from the other person; or

(ii) is entitled to acquire the information from the other person only because the other person is obliged to assist the corporation to comply with this Act; and

(c) the other person has refused to give the information to the registered corporation; and

(d) any other requirements specified in the regulations have been met;

determine, in writing, that the information is to be provided by the other person.

(4) The other person must, in accordance with any requirements specified in the regulations, provide that information to the Regulator on or before the day specified in the determination.

Civil penalty:

(a) for an individual—400 penalty units; or

(b) otherwise—2,000 penalty units.

Note 1: Under Division 137 of the *Criminal Code* it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

Note 2: Under section 30 the person may be liable for an additional civil penalty for each day after the day specified in the determination for which it fails to provide information in accordance with this section.

(5) The Regulator must give written notice of a determination, or a decision refusing to make a determination, to the registered corporation and the other person.

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21 Reports relating to greenhouse gas projects: reduction of greenhouse gas emissions and removals of greenhouse gases

(1) A registered corporation may, in respect of a financial year or such longer period as the Regulator allows, provide a report to the Regulator relating to the:

(a) reduction of greenhouse gas emissions; and

(b) removals of greenhouse gases;

from a greenhouse gas project that the corporation, or one or more members of the corporation's group, have undertaken during that year or period.

(2) If a registered corporation or a member of its group undertakes a greenhouse gas project for part of a financial year or period, the report under subsection (1) in relation to the project for that year or period must only relate to the:

(a) reduction of greenhouse gas emissions; and

(b) removal of greenhouse gases;

from the project which are attributable to that part of the year or period.

(3) A report must not be provided under subsection (1) unless the greenhouse gas project satisfies the requirements specified in the regulations made for the purposes of the definition of ***greenhouse gas project*** in section 7 for that type of greenhouse gas project.

(4) A report must:

(a) be based on methods determined by the Minister under subsection 10(3), or methods which meet criteria determined by the Minister under that subsection, where the use of those methods satisfies any conditions specified in the determination under that subsection; and

(b) include any information specified by the regulations for the purposes of this paragraph.

Civil penalty: 1,000 penalty units.

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Note: Under Division 137 of the *Criminal Code* it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

(5) Without limiting paragraph (4)(b), regulations made for the purposes of that paragraph may specify different requirements for different types of greenhouse gas projects and may require information relating to the:

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

from undertaking the greenhouse gas project.

(6) A report is taken not to be a report under this section unless:

(a) it is given in a manner and form approved by the Regulator; and

(b) it is given to the Regulator within a period specified in the regulations; and

(c) subsections (3) and (4) have been complied with.

21A Reports relating to offsets of greenhouse gas emissions

(1) A registered corporation may, in respect of a financial year, provide a report to the Regulator relating to the offsets of greenhouse gas emissions by the corporation, or one or more members of the corporation's group, during that year.

(2) A report must include any information specified by the regulations for the purposes of this subsection.

Civil penalty: 1,000 penalty units.

Note: Under Division 137 of the *Criminal Code* it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

(3) A report is taken not to be a report under this section unless:

(a) it is given in a manner and form approved by the Regulator; and

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(b) it is given to the Regulator within a period specified in the regulations; and

(c) subsection (2) has been complied with.

22 Records to be kept

(1) A registered corporation must keep records of the activities of the members of its group that:

(a) allow it to report accurately under this Act; and

(b) enable the Regulator to ascertain whether the corporation has complied with its obligations under this Act; and

(c) comply with the requirements of subsection (3) and the regulations made for the purposes of subsection (4).

Civil penalty: 1,000 penalty units.

(2) A person required to provide information under section 20 must keep records of the person's activities that:

(a) allow the person to provide information accurately under this Act; and

(b) enable the Regulator to ascertain whether the person has complied with its obligations under this Act; and

(c) comply with the requirements of subsection (3) and the regulations made for the purposes of subsection (4).

Civil penalty:

(d) for an individual—200 penalty units; or

(e) otherwise—1,000 penalty units.

(3) The corporation or person must retain the records for 5 years from the end of the year in which the activities take place.

(4) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) form of records;

that must be kept under subsection (1) or (2).

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(5) In this section:

this Act does not include Part 3E.

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Part 3E—Reporting obligations of holders of reporting transfer certificates

Division 1—Reporting obligations

22G Report to be given to the Regulator

(1) If a corporation was the holder of a reporting transfer certificate in relation to a facility during the whole or a part of a financial year, the corporation must, in accordance with this section, provide a report to the Regulator relating to the:

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

from the operation of the facility during the whole, or the part, as the case may be, of that financial year.

Civil penalty: 2,000 penalty units.

Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

Note 2: Under section 30, a corporation may be liable for an additional civil penalty for each day after the end of the period mentioned in paragraph (2)(d) for which the corporation fails to provide a report in accordance with this section.

(1A) Subsection (1) does not apply to:

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

unless the Minister has, under subsection 10(3), determined:

(d) methods by which the amounts of the emissions, production or consumption, as the case may be, are to be measured; or

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(e) criteria for methods by which the amounts of emissions, production or consumption, as the case may be, are to be measured.

Note: Paragraph (2)(b) requires that a report under this section must be based on methods, or methods which meet criteria, determined under subsection 10(3).

(2) A report under this section must:

(a) be given in a manner and form approved by the Regulator; and

(b) be based on:

(i) methods determined by the Minister under subsection 10(3); or

(ii) methods which meet criteria determined by the Minister under that subsection;

where the use of those methods satisfies any conditions specified in the determination under that subsection; and

(c) include any information specified by the regulations for the purposes of this paragraph; and

(d) be given to the Regulator before the end of 4 months after the end of the financial year.

(3) Regulations made for the purposes of paragraph (2)(c) may specify different requirements for different circumstances.

(4) In particular, and without limiting subsection (3), the regulations may specify different requirements for corporations who:

(a) do not meet any threshold; or

(b) do not meet specified thresholds;

for a financial year to which a report relates.

(5) Regulations made for the purposes of paragraph (2)(c) may also specify information that a State or Territory has requested the Regulator to collect.

(6) Reports under this section and section 19 may be set out in the same document.

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(7) If no regulations are in force for the purposes of paragraph (2)(c) of this section, then, in addition to their effect apart from this subsection, regulations made for the purposes of paragraph 19(6)(c) also have the effect they would have if:

(a) they were made for the purposes of paragraph (2)(c) of this section; and

(b) each reference in those regulations to a facility of the corporation were read as a reference to the facility to which the reporting transfer certificate relates; and

(c) each reference in those regulations to a facility under the operational control of the corporation were read as a reference to the facility to which the reporting transfer certificate relates; and

(d) those regulations were otherwise appropriately modified.

22H Records to be kept

(1) A corporation that is or was required to provide a report under section 22G for a financial year must keep records of the corporation's activities that:

(a) allow the corporation to report accurately under section 22G; and

(b) enable the Regulator to ascertain whether the corporation has complied with the corporation's obligations under section 22G; and

(c) comply with the requirements of subsection (2) and the regulations made for the purposes of subsection (3).

Civil penalty: 1,000 penalty units.

(2) The corporation must retain the records for 5 years from the end of the financial year in which the activities take place.

(3) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

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Division 2—Reporting transfer certificates

22J Reporting transfer test

A corporation (the ***transferee corporation***) passes the ***reporting transfer test*** in relation to a facility if:

(a) the facility is under the operational control of another corporation (the ***transferor corporation***); and

(b) the transferee corporation has financial control over the facility; and

(c) the transferee corporation is a company registered under Part 2A.2 of the *Corporations Act 2001*; and

(d) the transferee corporation is a constitutional corporation; and

(e) if the transferee corporation is a member of a controlling corporation's group—the transferor corporation is not a member of that group; and

(f) the transferor corporation is a member of a controlling corporation's group.

Note: For ***financial control***, see section 22R.

22K Application for reporting transfer certificate

Scope

(1) This section applies if a corporation passes the reporting transfer test in relation to a facility.

Application

(2) The corporation may apply to the Regulator for the issue to the corporation of a reporting transfer certificate in relation to the facility.

(3) The corporation is not entitled to make an application unless the corporation has the written consent of the controlling corporation mentioned in paragraph 22J(f).

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(4) If:

(a) the corporation is a member of a controlling corporation's group; and

(b) the corporation is not the controlling corporation;

the corporation is not entitled to make an application unless the corporation has the written consent of the controlling corporation.

Form of application

(5) An application must:

(a) be in writing; and

(b) be in a form approved by the Regulator; and

(c) set out such information as is specified in the form; and

(d) be accompanied by:

(i) the consent of the controlling corporation mentioned in paragraph 22J(f) to the making of the application; and

(ii) if subsection (4) applies—the consent of the controlling corporation mentioned in that subsection to the making of the application; and

(iii) a written statement, signed by an executive officer of the transferor corporation mentioned in section 22J, to the effect that the transferor corporation has agreed to give the applicant such information as is necessary for the applicant to comply with obligations that will be imposed on the applicant by this Act in relation to the facility if the certificate is issued; and

(iv) such information (if any) as is specified in the regulations; and

(v) such documents (if any) as are specified in the regulations.

(6) The approved form of application may provide for verification by statutory declaration of statements in applications.

(7) The approved form of application may require the applicant to set out its Australian Business Number (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*).

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22KA Further information

(1) The Regulator may, by written notice given to an applicant, require the applicant to give the Regulator, within the period specified in the notice, further information in connection with the application.

(2) If the applicant breaches the requirement, the Regulator may, by written notice given to the applicant:
  (a) refuse to consider the application; or
  (b) refuse to take any action, or any further action, in relation to the application.

22L Issue of reporting transfer certificate

Scope

(1) This section applies if an application under section 22K has been made for a reporting transfer certificate in relation to a facility.

Issue of certificate

(2) After considering the application, the Regulator may issue to the applicant a reporting transfer certificate in relation to the facility.

Criteria for issue of certificate

(3) The Regulator must not issue the reporting transfer certificate unless the Regulator is satisfied that:
  (a) the applicant passes the reporting transfer test in relation to the facility; and
  (b) the applicant has, and is likely to continue to have:
    (i) the capacity; and
    (ii) the access to information;
  necessary for it to comply with obligations that will be imposed on the applicant by this Act in relation to the facility if the certificate is issued; and
  (c) at least one of the following conditions has been, or is likely to be, satisfied:

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(i) during a financial year, the operation of the facility causes emissions of greenhouse gases that have a carbon dioxide equivalence of 25 kilotonnes or more;

(ii) during a financial year, the operation of the facility causes production of energy of 100 terajoules or more;

(iii) during a financial year, the operation of the facility causes consumption of energy of 100 terajoules or more; and

(d) if the regulations specify one or more other requirements—those requirements are met.

Timing

(4) The Regulator must take all reasonable steps to ensure that a decision is made on the application:

(a) if the Regulator requires the applicant to give further information under subsection 22KA(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or

(b) otherwise—within 90 days after the application was made.

Refusal

(5) If the Regulator decides to refuse to issue the reporting transfer certificate, the Regulator must give written notice of the decision to the applicant.

22M Duration of reporting transfer certificate

(1) A reporting transfer certificate comes into force on the day specified in the certificate as the day on which the certificate is to come into force (the ***start day***).

(2) The start day may be earlier than the day on which the certificate is issued, so long as:

(a) the start day occurs in:

(i) the same financial year as the day on which the certificate is issued; or

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(ii) the financial year preceding the financial year in which the certificate is issued; and

(b) each of the following has consented to the specification of the start day:

(i) the applicant;

(ii) if a controlling corporation consented under subsection 22K(3) to the making of the application for the certificate—the controlling corporation.

(3) A reporting transfer certificate remains in force until:

(a) a surrender of the certificate takes effect under section 22N; or

(b) the certificate is cancelled under section 22P.

22N Surrender of reporting transfer certificate

Scope

(1) This section applies if a corporation is the holder of a reporting transfer certificate in relation to a facility.

Surrender

(2) The corporation may, with the written consent of the Regulator, surrender the certificate.

(3) The surrender takes effect when the consent is given by the Regulator.

Consent to surrender

(4) The Regulator must not consent to the surrender of the certificate unless:

(a) if a controlling corporation consented under subsection 22K(3) to the making of the application for the certificate—the controlling corporation has agreed to the surrender of the certificate; and

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(b) the Regulator is satisfied that there are special circumstances that warrant the giving of consent to the surrender of the certificate.

22P Cancellation of reporting transfer certificate

Scope

(1) This section applies if a corporation is the holder of a reporting transfer certificate in relation to a facility.

Cancellation

(2) The Regulator must, by written notice given to the corporation, cancel the certificate if the Regulator is satisfied that:
   (a) the corporation does not pass the reporting transfer test in relation to the facility concerned; or
   (b) the corporation has become a Chapter 5 body corporate; or
   (c) if the regulations specify one or more other grounds for cancellation—at least one of those grounds is applicable to the corporation.

22Q Reporting transfer certificate is not transferable

A reporting transfer certificate is not transferable.

22R Financial control

(1) For the purposes of this Act, if a corporation (the ***operator***) has operational control over a facility, another corporation (the ***second corporation***) has ***financial control*** over the facility if:
   (a) under a contract between:
      (i) the operator; and
      (ii) the second corporation;
   the operator operates the facility on behalf of the second corporation; or
   (b) under a contract between:

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(i) the operator; and
(ii) the second corporation and one or more other persons;

the operator operates the facility on behalf of the second corporation and those other persons; or

(c) the second corporation is able to control the trading or financial relationships of the operator in relation to the facility; or

(d) the second corporation has the economic benefits from the facility; or

(e) all of the following conditions are satisfied:
(i) the second corporation is a participant in a joint venture;
(ii) there is one other participant in the joint venture;
(iii) the second corporation shares the economic benefits from the facility with the other participant;
(iv) the second corporation's share equals or exceeds the share of the other participant; or

(f) all of the following conditions are satisfied:
(i) the second corporation is a participant in a joint venture;
(ii) there are 2 or more other participants in the joint venture;
(iii) the second corporation shares the economic benefits from the facility with the other participants;
(iv) no other participant has a share that exceeds the share of the second corporation; or

(g) all of the following conditions are satisfied:
(i) the second corporation is a partner in a partnership;
(ii) there is one other partner in the partnership;
(iii) the second corporation shares the economic benefits from the facility with the other partner;
(iv) the second corporation's share equals or exceeds the share of the other partner; or

(h) all of the following conditions are satisfied:
(i) the second corporation is a partner in a partnership;
(ii) there are 2 or more other partners in the partnership;

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(iii) the second corporation shares the economic benefits from the facility with the other partners;

(iv) no other partner has a share that exceeds the share of the second corporation; or

(i) the second corporation is able to direct or sell the output of the facility; or

(j) under the regulations, the second corporation is taken to have financial control over the facility.

(2) In determining whether the second corporation has that financial control, regard must be had to the economic and commercial substance of the matters mentioned in subsection (1).

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Part 3F—Reporting obligations transferred to member of corporate group

22X Reporting obligations transferred to member of corporate group

Scope

(1) This section applies if:

(a) a facility is under the operational control of a member (the ***responsible member***) of a controlling corporation's group during the whole or a part of a financial year; and

(b) the controlling corporation and the responsible member have agreed to transfer reporting obligations for the facility to the responsible member; and

(c) before the end of the financial year, the controlling corporation and the responsible member have jointly notified the Regulator, in writing, of:

(i) the agreement; and

(ii) the facility to which the agreement relates.

Obligation to report

(2) The responsible member must, in accordance with this section and in respect of the financial year, provide a report to the Regulator relating to the:

(a) greenhouse gas emissions; and

(b) energy production; and

(c) energy consumption;

from the operation of the facility during the whole, or the part, as the case may be, of the financial year.

Civil penalty: 2,000 penalty units.

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Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

Note 2: Under section 30, a responsible member may be liable for an additional civil penalty for each day after the end of the period mentioned in paragraph (4)(d) for which the responsible member fails to provide a report in accordance with this section.

(3) Subsection (1) does not apply to:

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

unless the Minister has, under subsection 10(3), determined:

(d) methods by which the amounts of the emissions, production or consumption, as the case may be, are to be measured; or

(e) criteria for methods by which the amounts of emissions, production or consumption, as the case may be, are to be measured.

Note: Paragraph (4)(b) requires that a report under this section must be based on methods, or methods which meet criteria, determined under subsection 10(3).

(4) A report under this section must:

(a) be given in a manner and form approved by the Regulator; and

(b) be based on:

(i) methods determined by the Minister under subsection 10(3); or

(ii) methods which meet criteria determined by the Minister under that subsection;

where the use of those methods satisfies any conditions specified in the determination under that subsection; and

(c) include any information specified by the regulations for the purposes of this paragraph; and

(d) be given to the Regulator before the end of 4 months after the end of each financial year.

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(5) Regulations made for the purposes of paragraph (4)(c) may specify different requirements for different circumstances.

(6) Regulations made for the purposes of paragraph (4)(c) may also specify information that a State or Territory has requested the Regulator to collect.

22XA Records to be kept

(1) A person who is or was required to provide a report under section 22X for a financial year must keep records of the person's activities that:

(a) allow the person to report accurately under section 22X; and

(b) enable the Regulator to ascertain whether the person has complied with the person's obligations under section 22X; and

(c) comply with the requirements of subsection (2) and the regulations made for the purposes of subsection (3).

Civil penalty: 1,000 penalty units.

(2) The person must retain the records for 5 years from the end of the financial year in which the activities take place.

(3) The regulations may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

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Part 3G—Reporting obligations of responsible emitters of designated large facilities etc.

22XB Report to be given to Regulator

(1) If:

(a) a person is the responsible emitter for a facility during the whole or a part of a financial year (the ***relevant financial year***); and

(b) either:

(i) at least one day in the relevant financial year is included in a monitoring period for the facility in relation to the person; or

(ii) the facility is specified in the safeguard rules; and

(c) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year are not dealt with by a report given to the Regulator under section 19, 22G or 22X; and

(d) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year are not dealt with by a report given to the Regulator under section 19, 22G or 22X;

the person must, in accordance with this section, provide a report to the Regulator relating to:

(e) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year; or

(f) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions

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of greenhouse gases from the operation of the facility during that part of the relevant financial year.

Note 1: Under Division 137 of the *Criminal Code*, it may be an offence to provide false or misleading information or documents to the Regulator in purported compliance with this Act.

Note 2: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) A report under this section must:

(a) be given in a manner and form approved by the Regulator; and

(b) set out the information specified by the safeguard rules for the purposes of this paragraph; and

(c) be given to the Regulator before the end of 4 months after the end of the relevant financial year.

(3) Safeguard rules made for the purposes of paragraph (2)(b) may specify different requirements for different circumstances.

22XC Records to be kept

(1) If:

(a) a person is the responsible emitter for a facility during the whole or a part of a financial year (the ***relevant financial year***); and

(b) the person is or was required by section 22XB to provide a report to the Regulator relating to:

(i) if the person is the responsible emitter for the facility during the whole of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during the relevant financial year; or

(ii) if the person is the responsible emitter for the facility during a part of the relevant financial year—the covered emissions of greenhouse gases from the operation of the facility during that part of the relevant financial year;

the person must keep records of the person's activities that:

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(c) allow the person to report accurately under section 22XB; and

(d) enable the Regulator to ascertain whether the person has complied with the person's obligations under section 22XB; and

(e) comply with the requirements of subsection (2) and the safeguard rules made for the purposes of subsection (3).

(2) The person must retain the records for 5 years from the end of the relevant financial year.

(3) The safeguard rules may specify requirements relating to:

(a) the kinds of records; and

(b) the form of records;

that must be kept under subsection (1).

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Part 3H—Emissions reduction safeguard mechanism

Division 1—Introduction

22XD Simplified outline of this Part

- This Part sets up a mechanism to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.
- The mechanism starts on the safeguard commencement day.
- A facility is a designated large facility for a financial year if the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the year exceeds the number specified in the safeguard rules.
- The net emissions number for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period:
  (a) reduced by surrendered prescribed carbon units (for this purpose, Australian carbon credit units purchased by the Commonwealth are taken to have been surrendered); and
  (b) increased by Australian carbon credit units that were issued in relation to the facility.
- Each designated large facility will be subject to a monitoring period. If, at the end of a monitoring period, the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring

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period, an excess emissions situation exists in relation to the facility.

- If a person is the responsible emitter for a facility, the person must ensure that an excess emissions situation does not exist in relation to the facility.
- This Part also sets up a scheme for issuing and relinquishing safeguard mechanism credit units.

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Division 2—Limit on emissions

22XE Excess emissions situation

(1) For the purposes of this Act, if:

(a) there is a monitoring period for a facility in relation to a person; and

(b) the net emissions number for the facility for the monitoring period exceeds the baseline emissions number for the facility for the monitoring period;

an ***excess emissions situation*** exists in relation to the facility for the monitoring period, unless an exemption declaration mentioned in subsection (2) is in force in relation to the facility and the monitoring period.

Note 1: For ***monitoring period***, see section 22XG.

Note 2: For ***net emissions number***, see section 22XK.

Note 3: For ***baseline emissions number***, see section 22XL.

Exemption declaration

(2) The safeguard rules may empower the Regulator to declare in writing that an excess emissions situation does not exist in relation to a specified facility for a specified monitoring period. The declaration is to be known as an ***exemption declaration***.

(3) The safeguard rules must provide that the Regulator may only make an exemption declaration on the application of the person who was the responsible emitter for the relevant facility during the relevant monitoring period.

(4) The safeguard rules must provide that the Regulator must not make an exemption declaration unless the Regulator is satisfied that:

(a) disregarding subsections 22XK(2) and (3), the net emissions number for the relevant facility for the relevant monitoring period exceeds the baseline emissions number for the facility for the monitoring period; and

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(b) that excess is the direct result of any or all of the following:
  (i) a natural disaster;
  (ii) criminal activity;
  (iii) circumstances that, under the safeguard rules, are taken to be exceptional circumstances for the purposes of this subsection; and
(c) the responsible emitter:
  (i) has taken reasonable steps to mitigate risks of the relevant circumstance referred to in subparagraph (b)(i), (ii) or (iii) resulting in the situation described in paragraph (a); and
  (ii) has done so both before and after the occurrence of the circumstance; and
(d) such other conditions (if any) as are set out in the safeguard rules are satisfied.

22XF Duty to ensure that excess emissions situation does not exist

If:

(a) a person is or was the responsible emitter for a facility; and
(b) there is a monitoring period for the facility in relation to the person;

the person must ensure that an excess emissions situation does not exist in relation to the facility for the monitoring period:

(c) if the monitoring period ends at the end of a financial year—on the 1 April next following the financial year; or
(d) if the monitoring period ends during a financial year—on the 1 April next following the financial year.

Civil penalty: The number of penalty units that is equal to the difference between the net emissions number for the facility for the monitoring period and the baseline emissions number for the facility for the monitoring period.

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Division 3—Key concepts

22XG Monitoring periods

Monitoring period—single financial year

(1) For the purposes of this Act, if:

(a) a person is the responsible emitter for a facility throughout a financial year; and

(b) the financial year is not included in a declared multi-year period for the facility; and

(c) the facility is a designated large facility for the financial year;

the financial year is a ***monitoring period*** for the facility in relation to the person.

Note: For ***declared multi-year period***, see subsection (5).

Monitoring period—part of a single financial year

(2) For the purposes of this Act, if:

(a) a person is the responsible emitter for a facility throughout a part of a financial year; and

(b) the financial year is not included in a declared multi-year period for the facility; and

(c) the facility is a designated large facility for the financial year;

the part of the financial year is a ***monitoring period*** for the facility in relation to the person.

Note: For ***declared multi-year period***, see subsection (5).

Monitoring period—declared multi-year period

(3) For the purposes of this Act, if:

(a) there is a declared multi-year period for a facility; and

(b) a person is the responsible emitter for the facility throughout the declared multi-year period; and

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(c) the facility is a designated large facility for at least one of the financial years included in the declared multi-year period;

the declared multi-year period is a ***monitoring period*** for the facility in relation to the person.

Note: For ***declared multi-year period***, see subsection (5).

Monitoring period—part of a declared multi-year period

(4) For the purposes of this Act, if:

(a) there is a declared multi-year period for a facility; and

(b) a person is the responsible emitter for the facility throughout a part of the declared multi-year period; and

(c) the facility is a designated large facility for at least one of the financial years included in the declared multi-year period;

the part of the declared multi-year period is a ***monitoring period*** for the facility in relation to the person.

Note: For ***declared multi-year period***, see subsection (5).

Declared multi-year period

(5) The safeguard rules may empower the Regulator to declare in writing that, for the purposes of this section, a specified period is a ***declared multi-year period*** for a specified facility.

(6) The specified period must consist of 2 or more consecutive financial years.

22XH Responsible emitter

For the purposes of this Act, a person is the ***responsible emitter*** for a facility at a particular time if:

(a) the person has operational control of the facility at that time; and

(b) that time occurs on or after the safeguard commencement day.

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22XI Covered emissions

For the purposes of this Act, ***covered emissions*** of greenhouse gases means scope 1 emissions of one or more greenhouse gases, other than emissions of a kind specified in the safeguard rules.

22XJ Designated large facility

(1) For the purposes of this Act, a facility is a ***designated large facility*** for a financial year if:

(a) the total amount of covered emissions of greenhouse gases from the operation of the facility during the financial year has a carbon dioxide equivalence of a particular number of tonnes; and

(b) that number exceeds the number specified in the safeguard rules.

(2) The Minister must take all reasonable steps to ensure that safeguard rules are in force for the purposes of paragraph (1)(b) at all times on and after the safeguard commencement day.

22XK Net emissions number

(1) For the purposes of this Act, the ***net emissions number*** for a facility for a period is the number of tonnes of carbon dioxide equivalence of the total amount of covered emissions of greenhouse gases from the operation of the facility during the period.

Reduction—surrender of prescribed carbon units

(2) If:

(a) a number of prescribed carbon units are surrendered on a particular occasion; and

(b) the notice surrendering the units contains a statement to the effect that the units are being surrendered for the purpose of reducing the net emissions number for a facility for a period;

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the ***net emissions number*** for the facility for the period is reduced (but not below zero) by:

(c) if the safeguard rules provide that this paragraph applies to the surrender of those units—the number worked out in accordance with the safeguard rules for that surrender; or

(d) otherwise—the number of units surrendered.

Note: For surrender of prescribed carbon units, see section 22XN.

(2A) Safeguard rules made for the purposes of paragraph (2)(c) may provide that if:

(a) a person:

(i) surrendered; or

(ii) because of safeguard rules made for the purposes of paragraph (3)(d), is taken to have surrendered;

a number of prescribed carbon units for the purpose of reducing the net emissions number for a facility for a period; and

(b) some or all of those units:

(i) are prescribed carbon units of a specified kind; or

(ii) satisfy specified conditions;

the ***net emissions number*** for the facility for the period is reduced (but not below zero) by a number, worked out in accordance with those rules, that is less than the number of prescribed carbon units surrendered.

(2B) Subsection (2A) does not limit the safeguard rules that may be made for the purposes of paragraph (2)(c).

(3) If:

(a) a person surrendered a number of prescribed carbon units for the purpose of reducing the net emissions number for a facility for a period; and

(b) under the safeguard rules:

(i) there is taken to be an excess surrender situation of the person in relation to the facility for the period; and

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(ii) one or more of those units are taken to be covered by the excess surrender situation;

the safeguard rules may provide that this section has effect as if:

(c) the person had not surrendered the prescribed carbon units covered by the excess surrender situation for the purpose of reducing the net emissions number for the facility for the period; and

(d) the person had, at a time ascertained in accordance with the safeguard rules, surrendered, in relation to a later period ascertained in accordance with the safeguard rules, some or all of the prescribed carbon units covered by the excess surrender situation for the purpose of reducing the net emissions number for the facility for that later period.

Increase—Australian carbon credit units that were issued in relation to the facility

(4) If:

(a) a person (the ***relevant person***) was the responsible emitter for a facility throughout a particular period; and

(b) during that period, one or more Australian carbon credit units were issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* in respect of an eligible offsets project; and

(c) some or all of those Australian carbon credit units are attributable to carbon abatement at the facility; and

(d) if the units covered by paragraph (c) were issued to another person:

(i) the relevant person consented to the other person carrying out the project; and

(ii) the consent was given under regulations or legislative rules made for the purposes of paragraph 15(2)(h) or 27(4)(l) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*;

the ***net emissions number*** for the facility for the period is increased by the total number of those Australian carbon credit units.

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(5) Subsection (4) does not apply in circumstances prescribed by the safeguard rules.

22XL Baseline emissions number

(1) The ***baseline emissions number*** for a facility for a financial year is the number ascertained in relation to the facility in accordance with the safeguard rules.

Note: See also section 22XQ.

(2) The ***baseline emissions number*** for a facility for a period other than a financial year is the number worked out using the formula:

$$\frac{\text{Baseline emissions number for the facility for a financal year}}{365} \times \text{Number of days in the period}$$

(3) The Minister must take all reasonable steps to ensure that safeguard rules are in force for the purposes of subsection (1) at all times on and after the safeguard commencement day.

22XM Prescribed carbon unit

(1) For the purposes of this Act, ***prescribed carbon unit*** means:

(a) an Australian carbon credit unit; or

(aa) a safeguard mechanism credit unit; or

(b) a unit that is specified in the safeguard rules.

It is immaterial whether a unit specified in the safeguard rules was issued in or outside Australia.

(2) A unit must not be specified in safeguard rules made for the purposes of paragraph (1)(b) unless:

(a) the unit was issued under a scheme relating to either or both of the following:

(i) the removal of one or more greenhouse gases from the atmosphere;

(ii) the avoidance of emissions of one or more greenhouse gases; and

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(b) the unit represents carbon abatement that is able to be used to meet Australia's climate change targets under:

(i) the Kyoto Protocol; or

(ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

For the purposes of the application of the definition of ***Kyoto Protocol*** to paragraph (b)(ii), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

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Division 4—Surrender of prescribed carbon units

22XN How prescribed carbon units are surrendered

(1) A person who is the registered holder of one or more prescribed carbon units may, by electronic notice transmitted to the Regulator, surrender any or all of those units for the purposes of reducing the net emissions number for a facility for a period if:

(a) the person has complied with the requirements (if any) specified in the safeguard rules; and

(b) the surrender meets the requirements (if any) specified in the safeguard rules; and

(c) the period meets the requirements (if any) specified in the safeguard rules.

(1A) Safeguard rules made for the purposes of paragraph (1)(b) may provide that a surrender of prescribed carbon units under subsection (1):

(a) must include a number of:

(i) prescribed carbon units of a specified kind; or

(ii) prescribed carbon units that satisfy specified conditions;

that is worked out in accordance with those rules; or

(b) must not include a number of:

(i) prescribed carbon units of a specified kind; or

(ii) prescribed carbon units that satisfy specified conditions;

that exceeds a number worked out in accordance with those rules.

(1B) Subsection (1A) does not limit the safeguard rules that may be made for the purposes of paragraph (1)(b).

(2) A notice under subsection (1) must:

(a) specify the prescribed carbon unit or units that are being surrendered; and

(b) set out a statement to the effect that the prescribed carbon unit or units are being surrendered for the purpose of

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reducing the net emissions number for the facility for the period; and

(c) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the prescribed carbon unit or units that are being surrendered.

(3) If an Australian carbon credit unit is surrendered by a person for the purposes of reducing the net emissions number for a facility for a period:

(a) the unit is cancelled; and

(b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.

(4) If a prescribed carbon unit (other than an Australian carbon credit unit) is surrendered by a person:

(a) the Regulator must take such action in relation to the unit as is specified in the safeguard rules; and

(b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.

(5) The Registry must set out a record of each notice under subsection (1).

Deemed surrender—purchased Australian carbon credit units

(6) If:

(a) a person (the ***relevant person***) was the responsible emitter for a facility throughout a particular period; and

(b) during that period, one or more Australian carbon credit units were issued under the *Carbon Credits (Carbon Farming Initiative) Act 2011* in respect of an eligible offsets project; and

(c) some or all of those Australian carbon credit units are attributable to carbon abatement at the facility; and

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(d) if the units covered by paragraph (c) were issued to another person:

(i) the relevant person consented to the other person carrying out the project; and

(ii) the consent was given under regulations or legislative rules made for the purposes of paragraph 15(2)(h) or 27(4)(l) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and

(e) some or all of the units covered by paragraph (c) were purchased by the Commonwealth under a carbon abatement contract;

section 22XK has effect as if:

(f) the units covered by paragraph (e) had been surrendered by electronic notice transmitted to the Regulator under subsection (1) of this section instead of being purchased by the Commonwealth under a carbon abatement contract; and

(g) the notice surrendering the units had contained a statement to the effect that the units are being surrendered for the purpose of reducing the net emissions number for the facility for the period.

(7) Subsection (6) does not apply in circumstances prescribed by the safeguard rules.

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Division 4A—Safeguard mechanism credit units

Subdivision A—Issuing safeguard mechanism credit units

22XNA Issuing safeguard mechanism credit units

(1) The Regulator may, on behalf of the Commonwealth, issue units (to be known as ***safeguard mechanism credit units***) to one or more persons in relation to a facility.

Note: Safeguard mechanism credit units may be issued under this section to the Commonwealth in relation to a facility.

(2) The safeguard rules may make provision for, or in relation to, the issuing of safeguard mechanism credit units by the Regulator.

(3) Without limiting subsection (2), the safeguard rules may make provision in relation to one or more of the following:
- (a) applying for safeguard mechanism credit units to be issued;
- (b) the number of such units that may be issued to a person in relation to a facility;
- (c) how the Regulator is to determine the number of such units to be issued to a person in relation to a facility;
- (d) any conditions that may be imposed by the Regulator on a person issued with such units;
- (e) the review or reconsideration of any decision under the safeguard rules relating to the issuing of such units.

(4) Without limiting paragraph (3)(c), the safeguard rules may provide for the following in relation to a determination by the Regulator mentioned in that paragraph:
- (a) the methodology to be used by the Regulator in making a determination;
- (b) how a person may apply for a determination;
- (c) requiring an application for a determination to be accompanied by an audit report that is:
  - (i) prescribed by the safeguard rules; and

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(ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for that purpose.

22XNB Entry in Registry account must be made if safeguard mechanism credit units issued

Units issued to the Commonwealth

(1) If the Regulator decides to issue a safeguard mechanism credit unit to the Commonwealth in relation to a facility, the Regulator must make an entry for the unit in a Commonwealth Registry account.

Units issued to persons other than the Commonwealth

(2) If the Regulator decides to issue a safeguard mechanism credit unit to a person (other than the Commonwealth) in relation to a facility, the Regulator must make an entry for the unit in a Registry account kept by the person.

(3) The Regulator must not issue a safeguard mechanism credit unit to a person (other than the Commonwealth) unless:
(a) the person is a registered person; and
(b) the person has a Registry account.

22XNC Safeguard mechanism credit units issued must be identified with a financial year

Scope

(1) This section applies if the Regulator decides to issue a safeguard mechanism credit unit to a person in relation to a facility.

Requirement

(2) The Regulator must, in accordance with safeguard rules made for the purposes of this subsection, identify the unit with a financial year.

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22XND Safeguard mechanism credit units held in Commonwealth Registry accounts

(1) Without limiting subsection 22XNA(2), the safeguard rules may provide for:

(a) the transfer, in specified circumstances, of safeguard mechanism credit units held in a Commonwealth Registry account because of subsection 22XNB(1) to another person's Registry account; or

(b) the cancellation, in specified circumstances, of such units.

(2) If safeguard mechanism credit units held in a Commonwealth Registry account are cancelled in accordance with safeguard rules made for the purposes of paragraph (1)(b), the Regulator must remove the entries for those units from that account.

Subdivision B—Requirement to relinquish safeguard mechanism credit units etc.

22XNE Regulator may require relinquishment of safeguard mechanism credit units etc. issued on false or misleading information

Scope

(1) This section applies if:

(a) a number of safeguard mechanism credit units have been issued to a person (other than the Commonwealth) in relation to a facility; and

(b) the units were issued to the person on the basis of information given to the Regulator (whether or not by the person); and

(c) the information was false or misleading in a material particular; and

(d) the issue of any or all of the units was directly or indirectly attributable to the false or misleading information.

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Note: An example of false or misleading information would be a report given under this Act that contained inaccurate information about greenhouse gas emissions.

Relinquishment

(2) The Regulator may, by written notice given to the person, require the person to relinquish a specified number of relinquishable units.

(3) The specified number must not exceed the number of safeguard mechanism credit units the issue of which was directly or indirectly attributable to the false or misleading information.

(4) The person must comply with the requirement within 90 days after the notice was given.

Note: An administrative penalty is payable under section 22XNI for non-compliance with a relinquishment requirement.

22XNF Court may order relinquishment of safeguard mechanism credit units etc. issued as a result of fraudulent conduct

Scope

(1) This section applies if:

(a) one or more safeguard mechanism credit units were issued to a person on a particular occasion; and

(b) the person has been convicted of an offence against:

(i) section 134.1 of the *Criminal Code*; or

(ii) section 134.2 of the *Criminal Code*; or

(iii) section 135.1 of the *Criminal Code*; or

(iv) section 135.2 of the *Criminal Code*; or

(v) section 135.4 of the *Criminal Code*; or

(vi) section 136.1 of the *Criminal Code*; or

(vii) section 137.1 of the *Criminal Code*; or

(viii) section 137.2 of the *Criminal Code*; and

(c) an appropriate court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

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Note: For ***appropriate court***, see subsection (7).

Relinquishment

(2) The court may, on application made by the Director of Public Prosecutions or the Regulator, order the person:
  (a) to relinquish a specified number of relinquishable units not exceeding the number of safeguard mechanism credit units issued as mentioned in paragraph (1)(a); and
  (b) to do so by a specified time.

Compliance

(3) The person must comply with an order under subsection (2).

Note: An administrative penalty is payable under section 22XNI for non-compliance with a relinquishment requirement.

(4) The person does not comply with an order under subsection (2) unless the notice of relinquishment under section 22XNH specifies the order.

(5) To avoid doubt, the person is required to comply with an order under subsection (2) even if:
  (a) the person is not the registered holder of any relinquishable units; or
  (b) the person is not the registered holder of the number of relinquishable units required to be relinquished.

Copy of order

(6) A copy of an order under subsection (2) is to be given to the Regulator.

Appropriate court

(7) For the purposes of this section, each of the following is an ***appropriate court***:
  (a) the court that convicted the person of the offence;
  (b) the Federal Court of Australia;

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(c) the Supreme Court of a State or Territory.

Spent convictions

(8) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

22XNG Information on Regulator's website regarding relinquishment requirements

(1) If a person is required under section 22XNE or 22XNF to relinquish a specified number of relinquishable units, the Regulator must publish the following information on the Regulator's website:
   (a) the person's name;
   (b) details of the requirement;
   (c) if an amount payable by the person under section 22XNI in relation to non-compliance with the requirement remains unpaid after the time when the amount became due for payment—details of the unpaid amount;
   (d) if the person relinquishes one or more units to comply with the requirement—the total number of units relinquished.

(2) If a decision by the Regulator under section 22XNE is the subject of an application for review made to the Administrative Appeals Tribunal, the Regulator must publish an appropriate annotation on the Regulator's website about:
   (a) the application; and
   (b) when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.

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Subdivision C—Compliance with relinquishment requirement

22XNH Relinquishing safeguard mechanism credit units etc. to comply with requirements

(1) If:

(a) a person is required under section 22XNE or 22XNF to relinquish a specified number of relinquishable units; and

(b) the person is the registered holder of one or more relinquishable units;

the person may, by electronic notice transmitted to the Regulator, relinquish any or all of the units held by the person.

(2) The notice must specify:

(a) the units that are being relinquished; and

(b) the requirement to which the relinquishment relates; and

(c) the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the units that are being relinquished.

(3) The units relinquished are cancelled and the Regulator must remove the entries for those units from the person's Registry account.

(4) The Registry must set out a record of each notice under subsection (1).

22XNI Administrative penalty if relinquishment requirements not complied with

Scope

(1) This section applies if:

(a) a person is required under section 22XNE or 22XNF to relinquish a particular number of relinquishable units; and

(b) the person is required to do so by a particular time (the ***compliance deadline***).

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No units relinquished

(2) If, by the compliance deadline, the person has not relinquished any units in order to comply with the requirement, the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\text{Number of units required to be relinquished} \times \text{Prescribed amount}$$

where:

prescribed amount means the greater of the following amounts:

(a) $20;

(b) 200% of the market value of a safeguard mechanism credit unit as at the compliance deadline.

Relinquishment of insufficient units

(3) If, by the compliance deadline:

(a) the person has relinquished one or more units in order to comply with the requirement; and

(b) the number of units is less than the number of units required to be relinquished;

the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\left(\text{Number of units required to be relinquished} - \text{Number of relinquished units}\right) \times \text{Prescribed amount}$$

where:

prescribed amount means the greater of the following amounts:

(a) $20;

(b) 200% of the market value of a safeguard mechanism credit unit as at the compliance deadline.

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When penalty becomes due and payable

(4) An amount payable under this section is due and payable at the end of 30 days after the compliance deadline.

Compliance

(5) To avoid doubt, a person may be liable to pay a penalty under this section even if:
  (a) the person is not the registered holder of any relinquishable units; or
  (b) the person is not the registered holder of the number of relinquishable units required to be relinquished.

Market value

(6) The safeguard rules may provide that, for the purposes of this section, the ***market value*** of a safeguard mechanism credit unit is to be ascertained in accordance with those rules.

22XNJ Late payment penalty

Penalty

(1) If an amount payable by a person under section 22XNI remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount calculated at the rate of:
  (a) 20% per annum; or
  (b) if a lower rate per annum is specified in the safeguard rules—that lower rate per annum;

on the amount unpaid, computed from that time.

Power to remit

(2) The Regulator may remit the whole or a part of an amount payable under subsection (1) if:

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(a) the Regulator is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or

(b) the Regulator is satisfied:

(i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and

(ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or

(c) the Regulator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.

(3) The Regulator may exercise the power conferred by subsection (2):

(a) on written application being made to the Regulator by a person; or

(b) on the Regulator's own initiative.

Refusal

(4) If:

(a) the Regulator decides to refuse to remit the whole or a part of an amount payable under subsection (1); and

(b) the Regulator made the decision in response to an application;

the Regulator must give written notice of the decision to the applicant.

22XNK Recovery of penalties

An amount payable under section 22XNI or 22XNJ:

(a) is a debt due to the Commonwealth; and

(b) may be recovered by the Regulator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

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22XNL Set-off

If:

(a) an amount (the ***first amount***) is payable under section 22XNI or 22XNJ by a person; and

(b) the following conditions are satisfied in relation to another amount (the ***second amount***):

(i) the amount is payable by the Commonwealth to the person;

(ii) the amount is of a kind specified in the safeguard rules;

the Regulator may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

22XNM Refund of overpayments

Refund

(1) If either of the following amounts has been overpaid by a person, the amount overpaid must be refunded by the Commonwealth:

(a) an amount payable under section 22XNI;

(b) an amount payable under section 22XNJ.

Note: For the appropriation for the refund, see section 77 of the *Public Governance, Performance and Accountability Act 2013*.

Interest on overpayment

(2) If:

(a) an amount overpaid by a person is refunded by the Commonwealth under subsection (1); and

(b) the overpayment is attributable, in whole or in part, to an error made by the Regulator;

interest calculated in accordance with subsection (3) is payable by the Commonwealth to the person in respect of the amount refunded.

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(3) Interest payable to a person under subsection (2) in respect of an amount refunded to the person is to be calculated:
  (a) in respect of the period that:
    (i) began when the overpaid amount was paid to the Commonwealth; and
    (ii) ended when the amount was refunded; and
  (b) at the base interest rate (within the meaning of section 8AAD of the *Taxation Administration Act 1953*).

(4) The Consolidated Revenue Fund is appropriated for the purposes of making payments of interest under subsection (2).

22XNN Stay of proceedings for the recovery of an administrative penalty

Scope

(1) This section applies if:
  (a) a notice was given to a person under section 22XNE; and
  (b) the notice required the person to relinquish a particular number of relinquishable units; and
  (c) the person did not comply with the requirement within 90 days after the notice was given; and
  (d) proceedings for the recovery of the penalty payable under section 22XNI in respect of the non-compliance with the requirement (including any late payment penalty payable under section 22XNJ in relation to the section 22XNI penalty) are before a court; and
  (e) the decision to require the person to relinquish a specified number of relinquishable units is the subject of an application for review by the Administrative Appeals Tribunal.

Stay of proceedings

(2) The court may stay the proceedings until the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.

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(3) This section does not limit the power of:

(a) a court; or

(b) a Judge; or

(c) a magistrate;

under any other law to order a stay of proceedings.

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Division 5—Other matters

22XO Concurrent operation of State and Territory laws

(1) The safeguard provisions and the safeguard rules are not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with the safeguard provisions and those rules.

(2) Subsection (1) of this section has effect subject to section 5.

22XP Administrative decisions under the safeguard rules etc.

(1) The safeguard rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

(2) The safeguard rules may empower the Regulator to give advisory notices.

(3) Subsection (2) does not limit subsection (1).

22XQ Baseline determinations made under the safeguard rules etc.

Scope

(1) This section applies to a determination that:
  (a) is made by the Regulator under the safeguard rules; and
  (b) relates to the ascertainment of the baseline emissions number for a facility for a financial year.

Commencement of determination

(2) The safeguard rules may provide that a determination comes into force:
  (a) when it is made; or
  (b) if:
    (i) an earlier day is specified in the determination; and

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(ii) that day is not earlier than the financial year in which the determination was made;

on the day specified; or

(c) if:

(i) an earlier day is specified in the determination; and

(ii) that day is not earlier than the financial year preceding the financial year in which the determination was made; and

(iii) the effect of the determination is to increase the baseline emissions number for a facility for a financial year;

on the day specified.

Audit

(3) The safeguard rules may provide that an application for a determination is to be accompanied by an audit report that is:

(a) prescribed by the safeguard rules; and

(b) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose.

22XR Alternative constitutional basis

(1) Without limiting their effect apart from this section, the safeguard provisions also have effect as provided by this section.

External affairs

(2) The safeguard provisions also have the effect they would have if:

(a) subsection (3) had not been enacted; and

(b) the safeguard provisions did not apply except to the extent to which they relate to:

(i) matters of international concern; or

(ii) matters external to Australia.

Limited types of responsible emitters

(3) The safeguard provisions also have the effect they would have if:

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(a) subsection (2) had not been enacted; and
(b) each reference in:
(i) section 15B; and
(ii) section 18AA; and
(iii) section 22XB; and
(iv) section 22XC; and
(v) section 22XF; and
(va) section 22XNA;
to a person were, by express provision, confined to a person who is:
(vi) a constitutional corporation; or
(vii) an authority of the Commonwealth.

22XS Safeguard rules

(1) The Minister may, by legislative instrument (and subject to subsections (1A) and (2)), make rules (***safeguard rules***) prescribing matters:
(a) required or permitted by this Act to be prescribed by the safeguard rules; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to the safeguard provisions.

(1A) The Minister must not make safeguard rules unless the Minister is satisfied that those rules:
(a) are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and
(b) take into account the safeguard outcomes in paragraphs 3(2)(e) and (f).

(1B) If the Minister makes safeguard rules, the Minister must publish on the Department's website the Minister's reasons for being satisfied that the safeguard rules:
(a) are consistent with each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d); and

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(b) take into account the safeguard outcomes in paragraphs 3(2)(e) and (f).

(1C) If safeguard rules are in force and the Minister receives advice under subsection 14(1) of the *Climate Change Act 2022* that:

(a) safeguard emissions, or net safeguard emissions, for a financial year are not declining consistently with a safeguard outcome in paragraph 3(2)(b), (c) or (d) of this Act; and

(b) the safeguard rules need to be amended in order to achieve each of those safeguard outcomes;

the Minister must:

(c) undertake public consultation in relation to whether the safeguard rules need to be amended in order to achieve the safeguard outcomes and the content of any such amendment; and

(d) if satisfied that the safeguard rules need to be amended in order to achieve the safeguard outcomes—amend the safeguard rules.

(1D) If safeguard rules are in force and the Secretary is satisfied, having regard to:

(a) an estimate given to the Secretary under section 15A of the *Climate Change Act 2022*; or

(b) information published under subsection 24(3B) of this Act; or

(c) information given to the Secretary, by an agency or authority of the Commonwealth, a State or a Territory, relating to the likely covered emissions of a designated large facility for a financial year;

that the safeguard rules need to be amended in order to achieve each of the safeguard outcomes in paragraphs 3(2)(b), (c) and (d) of this Act, then:

(d) the Secretary must advise the Minister that the Secretary is so satisfied; and

(e) the Minister must:

(i) undertake public consultation in relation to whether the safeguard rules need to be amended in order to achieve

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the safeguard outcomes and the content of any such amendment; and

(ii) if satisfied that the safeguard rules need to be amended in order to achieve the safeguard outcomes—amend the safeguard rules.

(1E) Subsections (1C) and (1D) do not limit section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instruments).

(2) To avoid doubt, the safeguard rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention;

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) amend this Act.

(3) Safeguard rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but safeguard rules are taken to be consistent with the regulations to the extent that safeguard rules are capable of operating concurrently with the regulations.

(4) Safeguard rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(5) Subsection (4) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(6) If safeguard rules make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must

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ensure that the text of the matter applied, adopted or incorporated is published on its website.

(7) Subsection (6) does not apply if the publication would infringe copyright.

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Part 4—Disclosure of information

23 Secrecy—audit information

(1) A person mentioned in subsection (2) commits an offence if:

(a) the person obtains audit information in his or her capacity as a person mentioned in subsection (2); and

(b) the person discloses the information to another person otherwise than under, or for the purposes of:

(i) this Act or the performance of duties in relation to this Act; or

(ia) the safeguard rules or the performance of duties in relation to the safeguard rules; or

(ii) another law of the Commonwealth or the performance of duties in relation to another law of the Commonwealth.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Note: The same conduct may be an offence against both this section and section 122.4 of the *Criminal Code*.

(2) This section applies to a person who is or was:

(d) an audit team leader; or

(da) an audit team member.

Note: For the protection of other information, see Part 3 of the *Clean Energy Regulator Act 2011* (secrecy obligations of officials of the Regulator).

24 Publishing of information

Publication relating to greenhouse gas emissions, energy production and energy consumption

(1) The Regulator must, by 28 February in a financial year, publish the following on its website in relation to a registered corporation's group:

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(a) totals of greenhouse gas emissions that are scope 1 emissions reported under Part 3 or 3F in relation to the corporation's group for the previous financial year;

(b) totals of greenhouse gas emissions that are scope 2 emissions reported under Part 3 or 3F in relation to the corporation's group for the previous financial year;

(c) the totals of net energy consumption for the corporation's group for the previous financial year.

(1A) In addition to publishing information for the corporation's group in accordance with subsection (1), the Regulator may also publish on its website:

(a) totals of greenhouse gas emissions that are scope 1 emissions for:

(i) each member of the corporation's group; or

(ii) each business unit in relation to the corporation's group;

reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(b) totals of greenhouse gas emissions that are scope 2 emissions for:

(i) each member of the corporation's group; or

(ii) each business unit in relation to the corporation's group;

reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(c) the totals of net energy consumption for each member of the corporation's group, or each business unit in relation to the corporation's group, for the previous financial year; and

(d) the methods mentioned in paragraph 19(6)(b) or 22X(4)(b) that were used to measure:

(i) the totals for the corporation's group referred to in paragraphs (1)(a) and (b); and

(ii) the totals of energy consumption reported under Part 3 or 3F in relation to the corporation's group for the previous financial year; and

(e) the rating given to each of those methods under the determination under subsection 10(3).

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This subsection is subject to subsection 25(3).

(1AD) If a person gives the Regulator a report under section 22G in relation to a financial year, the Regulator must publish on its website, by 28 February next following the financial year:

(a) the greenhouse gas emissions that are scope 1 emissions (within the meaning of the regulations) set out in the report; and

(b) the greenhouse gas emissions that are scope 2 emissions (within the meaning of the regulations) set out in the report; and

(c) the net energy consumption derived from the report.

(1AE) In addition to publishing the matters mentioned in subsection (1AD), the Regulator may also publish on its website:

(a) the methods mentioned in paragraph 22G(2)(b) that were used to measure the values for the facility concerned; and

(b) the rating given to each of those methods under the determination under subsection 10(3).

This subsection is subject to subsection 25(3).

(1AF) If the amount of greenhouse gas emitted, and the amount of energy produced, from the operation of a designated generation facility during a financial year is set out in a report under this Act for the financial year, the Regulator must publish those amounts on its website by 28 February next following the financial year.

(1AG) If the amounts of greenhouse gases emitted from the operation of 2 or more designated generation facilities during a financial year are set out in a report under this Act for the financial year, the Regulator must publish the total of those amounts on its website by 28 February next following the financial year.

(1AH) If the amounts of energy produced from the operation of 2 or more designated generation facilities during a financial year are set out in a report under this Act for the financial year, the Regulator must publish the total of those amounts on its website by 28 February next following the financial year.

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Limitations

(1B) The Regulator must not publish information mentioned in subsection (1) unless:

(a) the corporation's group meets a threshold mentioned in paragraph 13(1)(a) for the financial year covered by the report; and

(b) no application has been made under section 25 in relation to that information, or if such an application has been made, it has been refused.

(1C) However, if the Regulator accepts an application under section 25 in relation to information mentioned in subsection (1), the Regulator may instead publish on its website the fact that the totals concerned fall within a specified range of values.

(1F) The Regulator must not publish information mentioned in subsection (1AD) unless:

(a) no application has been made under section 25 in relation to that information; or

(b) if such an application has been made—it has been refused.

(1G) However, if the Regulator accepts an application under section 25 in relation to information mentioned in subsection (1AD), the Regulator may instead publish on its website the fact that the values concerned fall within a specified range of values.

(1H) The Regulator must not publish information mentioned in subsection (1AD) that is reported by a person under section 22G for a financial year in relation to a facility unless the operation of the facility during the financial year causes:

(a) emissions of greenhouse gases that have a carbon dioxide equivalence of 25 kilotonnes or more; or

(b) production of energy of 100 terajoules or more; or

(c) consumption of energy of 100 terajoules or more.

(1J) If the person was the holder of the relevant reporting transfer certificate in relation to the facility for a number of, but not all, days in the financial year (the ***control days***), paragraphs (1H)(a),

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(b) and (c) have effect as though each amount mentioned in the relevant paragraph were replaced by the amount worked out using the following formula:

$$\text{Amount that would otherwise apply} \times \frac{\text{Number of control days}}{\text{Number of days in the year}}$$

(1K) Subsection (1H) does not apply to:

(a) greenhouse gas emissions; or

(b) energy production; or

(c) energy consumption;

unless the Minister has, under subsection 10(3), determined:

(d) methods by which the amounts of the emissions, production or consumption, as the case may be, are to be measured; or

(e) criteria for methods by which the amounts of emissions, production or consumption, as the case may be, are to be measured.

Publication relating to greenhouse gas projects

(2) The Regulator may publish on its website information relating to the greenhouse gas projects undertaken by a registered corporation, or a member of the corporation's group, if the information satisfies the requirements of regulations made for the purposes of this subsection. This subsection is subject to subsection 25(3).

Publication relating to offsets of greenhouse gas emissions

(3) The Regulator may publish on its website information relating to the offsets of greenhouse gas emissions by a registered corporation, or a member of the corporation's group, reported under section 21A if the information satisfies the requirements of regulations made for the purposes of this subsection. This subsection is subject to subsection 25(3).

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Publication relating to the safeguard mechanism

(3A) If the total amount of covered emissions of greenhouse gases from the operation of a designated large facility during a financial year is set out in a report under this Act for the financial year, the Regulator must publish on its website by 15 April next following the financial year:

(a) that total amount; and

(b) the amount of those covered emissions that were carbon dioxide, methane and nitrous oxide; and

(c) the baseline emissions number for the facility for the financial year; and

(d) if safeguard mechanism credit units have been issued in relation to the facility and the financial year—the number of those units; and

(e) if a monitoring period for the facility ended during, or at the end of, the financial year—the following:

(i) the net emissions number for the facility for that period;

(ii) the number and type of prescribed carbon units (if any) surrendered for the purpose of reducing the net emissions number for the facility for that period;

(iii) if any of those units were Australian carbon credit units issued in respect of an eligible offsets project for a reporting period (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) for the project—the methodology determination (within the meaning of that Act) that applied to the project for that period.

(3B) For each financial year between 1 July 2023 and 30 June 2030, the Regulator must publish on its website by 15 April next following the financial year:

(a) the safeguard emissions for the financial year; and

(b) the net safeguard emissions for the financial year; and

(c) the 5-year rolling average safeguard emissions for the financial year; and

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(d) the total safeguard emissions for all of the financial years between 1 July 2020 and the end of the financial year.

(4) Subsections (3A) and (3B) do not limit the requirements that may be prescribed by the safeguard rules in relation to the publication of information.

Publication by States or Territories

(5) A State or Territory, or an authority of a State or Territory, may publish information disclosed to it under subsection 27(1) if the publication of the information is required under a law of the State or Territory.

(5A) A State or Territory, or an authority of a State or Territory, may publish information disclosed to it under subsection 27(1) if the information is in an aggregated form that does not disclose, either directly or indirectly, information about a specific:

(a) registered corporation; or

(b) registered corporation's group; or

(c) non-corporate entity; or

(d) facility.

Publication by other persons

(6) A person may publish greenhouse and energy information disclosed to it under Part 3 of the *Clean Energy Regulator Act 2011* if the information is in an aggregated form that does not disclose, either directly or indirectly, information about a specific:

(a) registered corporation; or

(b) registered corporation's group; or

(c) non-corporate entity; or

(d) facility.

Net energy consumption

(7) For the purposes of subsections (1) and (1A), ***net energy consumption*** for a financial year means energy consumption

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reported under Part 3 or 3F for the financial year, adjusted in accordance with the regulations.

(8) For the purposes of subsection (1AD), the ***net energy consumption*** derived from a report under section 22G means the energy consumption set out in the report, adjusted in accordance with the regulations.

25 Requests for information not to be published

(1) A registered corporation, a person required to provide a report under section 22G, 22X or 22XB, or a person required to provide information under section 20, may apply to the Regulator requesting information not be published if the information reveals, or could be capable of revealing:

(a) trade secrets; or

(b) any other matter having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;

about a specific facility, technology or corporate initiative relating to the corporation or the person.

(2) The application must:

(a) identify the corporation or the person; and

(b) identify the information that is requested not to be published; and

(c) be given in the manner and form approved by the Regulator.

(3) The Regulator may accept the application and not publish the information if he or she is satisfied that the information would reveal, or would be capable of revealing, information of a kind specified in subsection (1).

(4) The Regulator must notify an applicant, in writing, of a decision to accept or refuse an application under this section.

(5) This section does not apply to information required to be published under subsection 24(1AF), (3A) or (3B).

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27 Information may be disclosed to States and Territories

(1) The Regulator, or a person authorised by the Regulator, must disclose greenhouse and energy information to a State or Territory or an authority of a State or Territory if:

(a) it is information mentioned in subsection 19(9), 22G(5) or 22X(6); or

(b) it is information relating to facilities that are wholly or partly located in the State or Territory.

(1A) However, the Regulator may refuse to disclose information under this section if satisfied that there would not be adequate security measures in place in relation to the confidentiality of the information.

(2) The Regulator may make disclosure of information under this section subject to conditions including:

(a) restrictions on disclosure of the information to other persons; and

(b) security measures required in relation to the confidentiality of the information; and

(c) the State, Territory, or authority not requiring the reporting or disclosure of other information of a kind similar to greenhouse and energy information.

(3) A person commits an offence if:

(a) the person is subject to a condition mentioned in paragraph (2)(a); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

28 Corporation may request information be disclosed

(1) A registered corporation may, by written notice, request the Regulator to disclose greenhouse and energy information related to the corporation or to a member of the corporation's group.

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(2) The notice must:

(a) specify the information to be disclosed; and

(b) specify the person or persons to whom the information is to be disclosed; and

(c) be given in the manner and form approved by the Regulator.

(3) The Regulator may, within a reasonable period after being given the notice, disclose the information.

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Part 5—Enforcement

Division 1—Civil penalties

Subdivision A—Civil penalty orders

29 Civil penalty provisions

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

(a) a subsection of this Act (or a section of this Act that is not divided into subsections) if the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section);

(b) a subsection of this Act if another provision of this Act specifies that the subsection is a civil penalty provision.

30 Continuing contraventions

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

(2) If, under section 12, 19, 20, 73 or 73A, an act or thing is required to be done within a particular period, or before a particular time, and a person fails to comply with that requirement, the person is liable for a civil penalty for each day that the person fails to comply.

Civil penalty: 100 penalty units per day.

(2A) If, under section 11B, 22X, 74AA or 74B, an act or thing is required to be done within a particular period, or before a particular time, and a person fails to comply with that requirement, the

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person is liable for a civil penalty for each day that the person fails to comply.

Civil penalty:

(a) for an individual—20 penalty units per day; or

(b) otherwise—100 penalty units per day.

(2B) If, under section 22G, an act or thing is required to be done within a particular period, and a person fails to comply with that requirement, the person is liable for a civil penalty for each day that the person fails to comply.

Civil penalty: 100 penalty units per day.

(2C) If, under section 22XF, a person is required to ensure that an excess emissions situation does not exist on a particular 1 April in relation to a facility for a monitoring period, and the person fails to comply with that requirement, the person is liable for a civil penalty for each day that the person fails to comply in the 2 year period beginning immediately after that 1 April.

Civil penalty: 100 penalty units per day.

(3) To avoid doubt, a person's failure to comply with a requirement covered by this section on a particular day is taken, for the purposes of this Act, not to be the same conduct as the person's failure to comply with that requirement on a different day.

31 Court may order person to pay pecuniary penalty for contravening civil penalty provision

Application for order

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

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Court may order person to pay pecuniary penalty

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

Maximum pecuniary penalty

(3) The pecuniary penalty must not exceed the sum of:
  (a) the relevant amount specified for the civil penalty provision; and
  (b) the amount (if any) for which the person is liable under section 30 at the time the Court makes the order.

Determining amount of pecuniary penalty

(4) In determining the pecuniary penalty, the Court may have regard to all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct; and
  (e) the extent to which the person has co-operated with the authorities; and
  (f) if the person is a body corporate:
    (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
    (ii) whether the body corporate exercised due diligence to avoid the contravention; and
    (iii) whether the body corporate had a corporate culture conducive to compliance.

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Conduct contravening more than one civil penalty provision

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

32 Contravening a civil penalty provision is not an offence

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

33 Persons involved in contravening civil penalty provision

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

(2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

34 Recovery of a pecuniary penalty

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

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Subdivision B—Civil penalty proceedings and criminal proceedings

35 Civil proceedings after criminal proceedings

A Court must not make a pecuniary 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 substantially the same as the conduct constituting the contravention.

36 Criminal proceedings during civil proceedings

(1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

37 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

38 Evidence given in proceedings for penalty not admissible in criminal proceedings

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

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(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to criminal proceedings in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

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Division 2—Infringement notices

39 When an infringement notice can be given

(1) If the Regulator has reasonable grounds to believe that a person has contravened a civil penalty provision, the Regulator may give to the person an infringement notice relating to the alleged contravention.

(2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice may be given to a person in respect of:

(a) 2 or more alleged contraventions of a civil penalty provision; and

(b) alleged contraventions of 2 or more civil penalty provisions.

However, the notice must not require the person to pay more than one penalty in respect of the same conduct.

40 Matters to be included in an infringement notice

(1) An infringement notice must:

(a) identify the person to whom the notice is given; and

(b) set out brief details of:

(i) the alleged contravention of the civil penalty provision; or

(ii) if the infringement notice relates to 2 or more alleged contraventions of a civil penalty provision or alleged contraventions of 2 or more civil penalty provisions—each alleged contravention; and

(c) contain a statement to the effect that proceedings will not be brought under this Part in relation to the alleged contravention or contraventions if the penalty specified in the notice is paid to the Regulator, on behalf of the Commonwealth, within:

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(i) 28 days after the notice is given; or
(ii) if the Regulator allows a longer period—that longer period; and

(d) contain a statement to the effect that the person to whom the notice is given may choose not to pay the penalty and, if the person does so, proceedings may be brought under this Part in relation to the alleged contravention or contraventions; and

(e) give an explanation of how payment of the penalty is to be made; and

(f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see section 41.

(2) For the purposes of paragraph (1)(b), the brief details must include the following information in relation to each alleged contravention:

(a) the date, time and place of the contravention;

(b) the civil penalty provision that was allegedly contravened.

41 Amount of penalty

(1) The penalty to be specified in an infringement notice relating to a person's alleged contravention of a civil penalty provision (other than section 22XF) must be a pecuniary penalty equal to whichever is the lesser of the following amounts:

(a) one-fifth of the maximum penalty that a Court could impose on the person for that contravention;

(b) if the person is an individual—12 penalty units;

(c) if the person is a body corporate—60 penalty units.

Note: To work out the maximum penalty mentioned in paragraph (a), see subsection 31(3).

(2) The penalty to be specified in an infringement notice relating to a person's alleged contravention of section 22XF must be a pecuniary penalty equal to whichever is the lesser of the following amounts:

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(a) one third of the maximum penalty that a Court could impose on the person for that contravention;
(b) 150,000 penalty units.

Note: To work out the maximum penalty mentioned in paragraph (a), see subsection 31(3).

42 Withdrawal of an infringement notice

(1) This section applies if an infringement notice is given to a person.

(2) The Regulator may, by written notice given to the person, withdraw the infringement notice.

Refund of penalty if infringement notice withdrawn

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

43 Paying the penalty in accordance with the notice

(1) This section applies if:
(a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and
(b) the penalty is paid in accordance with the infringement notice; and
(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged contravention is discharged.

(3) The payment of the penalty is not to be taken as an admission by the person of liability for the alleged contravention.

(4) Proceedings under this Part may not be brought against the person for the alleged contravention.

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44 Effect of this Division on civil proceedings

This Division does not:

(a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or

(b) affect the liability of a person to have proceedings under this Part brought against the person for an alleged contravention of a civil penalty provision if:

(i) the person does not comply with an infringement notice relating to the contravention; or

(ii) an infringement notice relating to the contravention is not given to the person; or

(iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or

(c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under this Part to have contravened a civil penalty provision.

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Division 3—Enforceable undertakings

45 Acceptance of undertakings relating to contraventions

(1) The Regulator may accept any of the following undertakings given by a person:

(a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act, the regulations or the safeguard rules;

(b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act, the regulations or the safeguard rules;

(c) a written undertaking that the person will take specified action directed towards ensuring that the person:

(i) does not commit a contravention of this Act, the regulations or the safeguard rules; or

(ii) is unlikely to commit a contravention of this Act, the regulations or the safeguard rules;

in the future;

(d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Regulator.

(4) The Regulator may, by written notice given to the person, cancel the undertaking.

(5) The undertaking may be published on an appropriate website.

46 Enforcement of undertakings

(1) If:

(a) a person has given an undertaking under section 45; and

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(b) the undertaking has not been withdrawn or cancelled; and

(c) the Regulator considers that the person has breached the undertaking;

the Regulator may apply to a Court for an order under subsection (2).

(2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the Regulator, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

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Division 4—Liability of executive officers of bodies corporate

47 Civil penalties for executive officers of bodies corporate

(1) If:

(a) a body corporate contravenes a civil penalty provision; and

(b) an executive officer of the body corporate knew that, or was reckless or negligent as to whether, the contravention would occur; and

(c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and

(d) the officer failed to take all reasonable steps to prevent the contravention;

the officer contravenes this subsection.

(1A) For the purposes of subsection (1), the officer is ***reckless*** as to whether the contravention would occur if:

(a) the officer is aware of a substantial risk that the contravention would occur; and

(b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.

(1B) For the purposes of subsection (1), the officer is ***negligent*** as to whether the 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 contravention would occur; and

that the conduct merits the imposition of a pecuniary penalty.

(2) Subsection (1) is a civil penalty provision.

(3) Under section 31, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order a body corporate to pay

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for contravening the civil penalty provision mentioned in paragraph (1)(a).

48 Did an executive officer take reasonable steps to prevent contravention?

(1) For the purposes of section 47, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a Court is to have regard to:

(a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):

(i) that the body corporate arranges regular professional assessments of the body corporate's compliance with this Act or the regulations;

(ii) that the body corporate implements any appropriate recommendations arising from such an assessment;

(iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations in so far as those requirements affect the employees, agents or contractors concerned; and

(b) what action (if any) the officer took when he or she became aware of the contravention.

(2) This section does not, by implication, limit the generality of section 47.

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Division 5—Injunctions

49 Injunctions

Scope

(1) This section applies to each of the following provisions:
- (a) subsection 11B(20);
- (b) subsection 11C(16);
- (c) subsection 12(1);
- (d) subsection 15B(1);
- (e) subsection 19(1);
- (f) subsection 20(4);
- (g) subsection 21(4);
- (h) subsection 21A(2);
- (i) subsection 22(1);
- (j) subsection 22(2);
- (k) subsection 22G(1);
- (l) subsection 22H(1);
- (m) subsection 22X(2);
- (n) subsection 22XA(1);
- (o) subsection 22XB(1);
- (p) subsection 22XC(1);
- (q) section 22XF.

Enforceable provisions

(2) The provision is enforceable under Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Authorised person

(3) The Regulator is an authorised person in relation to the provision for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

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Relevant court

(4) The Federal Court of Australia is a relevant court in relation to the provision for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Extension to external Territories etc.

(5) A reference to this Act in sections 6 to 6C of this Act includes a reference to Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as that Part applies in relation to the provision.

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Part 6—Administration

Division 2—Decisions by the Regulator

54 Regulator may declare facility—group

(1) The Regulator may declare that an activity or series of activities (including ancillary activities) are a facility:
  (a) on application by a controlling corporation; or
  (b) on the Regulator's own initiative.

(2) An application must:
  (a) identify the controlling corporation; and
  (b) identify the facility for which a declaration is sought; and
  (c) include any other information required by the regulations; and
  (d) be given in a manner and form approved by the Regulator.

(3) In considering making a declaration that an activity or series of activities are a facility, the Regulator must have regard to:
  (a) the matters dealt with in regulations made for the purposes of paragraph 9(1)(a); and
  (b) the need for each facility to be distinct from, and not overlap with, activities that constitute other facilities.

(4) The Regulator must notify an applicant under paragraph (1)(a), in writing, of a decision under subsection (1) to declare a facility or refuse the application.

(5) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the person that has, or that the Regulator reasonably believes has, operational control of the facility to which the declaration relates.

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54A Regulator may declare facility—non-group entity

(1) The Regulator may declare that an activity or series of activities (including ancillary activities) are a facility:
  (a) on application by a non-group entity; or
  (b) on the Regulator's own initiative.

(2) An application must:
  (a) identify the facility for which a declaration is sought; and
  (b) include any other information required by the regulations; and
  (c) be given in a manner and form approved by the Regulator.

(3) In considering making a declaration that an activity or series of activities are a facility, the Regulator must have regard to:
  (a) the matters dealt with in regulations made for the purposes of paragraph 9(1)(a); and
  (b) the need for each facility to be distinct from, and not overlap with, activities that constitute other facilities.

(4) The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare a facility or to refuse the application.

(5) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the person that has, or that the Regulator reasonably believes has, operational control of the facility to which the declaration relates.

54B Regulator may declare facility—anti-avoidance

(1) If:
  (a) one or more persons enter into, begin to carry out, or carry out, a scheme; and
  (b) an activity or a series of activities (including ancillary activities) (the ***relevant activities***) that form a single undertaking or enterprise would, but for this section, be a facility for the purposes of this Act; and

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(c) but for the scheme, some or all of the relevant activities would or might reasonably be expected to form all or part of a different single undertaking or enterprise (the ***expected undertaking or enterprise***) that meets the requirements of the regulations (if any) made for the purposes of paragraph (1)(a) of the definition of ***facility*** in section 9; and

(d) having regard to the matters specified in subsection (2) of this section, it could reasonably be concluded that the person, or any of the persons, who enter into, begin to carry out, or carry out, the scheme are doing so (or did so) solely or substantially for the purpose of:

(i) achieving the result that, for the purposes of this Act, the relevant activities are a facility that is not a designated large facility (whether or not the relevant activities are or have previously been a designated large facility); or

(ii) achieving the result that, for the purposes of this Act, the relevant activities are a facility with a higher baseline emissions number, or fewer covered emissions, than the baseline emissions number or covered emissions (as the case may be) of the expected undertaking or enterprise; or

(iii) achieving the result that, for the purposes of this Act, the relevant activities are a facility that is attributable to an industry sector other than the industry sector to which the expected undertaking or enterprise is attributable;

the Regulator may, on the Regulator's own initiative, declare that the expected undertaking or enterprise is a facility.

(2) The following matters are specified:

(a) the manner in which the scheme is entered into or carried out;

(b) the form and substance of the scheme;

(c) the time when the scheme is entered into and the length of the period during which the scheme is carried out;

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(d) the result in relation to the operation of this Act (if any) that, but for this section, would or might reasonably be expected to be achieved by the scheme in addition to the results mentioned in paragraph (1)(d).

(3) If the Regulator makes a declaration under subsection (1), the Regulator must notify, in writing, the person that has, or that the Regulator reasonably believes has, operational control of the facility to which the declaration relates.

55 Regulator may declare corporation etc. has operational control

(1) The Regulator may declare that a controlling corporation or another member of the corporation's group has operational control of a facility:
(a) on application by the corporation or member; or
(b) on the Regulator's own initiative.

(2) An application must:
(a) identify the corporation or member; and
(b) identify the facility for which a declaration of operational control is sought; and
(c) include any other information required by the regulations; and
(d) be given in a manner and form approved by the Regulator.

(3) In considering making a declaration that a controlling corporation or another member of the corporation's group has operational control of a facility, the Regulator must have regard to the matters dealt with in paragraph 11(1)(a) and regulations made for the purposes of that paragraph.

(3A) The Regulator must not declare that a controlling corporation or another member of the corporation's group has operational control of a facility unless the Regulator is satisfied that the corporation or member has substantial authority to introduce and implement either or both of the following for the facility:
(a) operating policies;

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(b) environmental policies.

(3B) The Regulator must not declare that a member of a controlling corporation's group (other than the controlling corporation) has operational control of a facility on application made by the member unless the controlling corporation has given written consent to the making of the declaration.

(4) The Regulator must notify an applicant under paragraph (1)(a), in writing, of a decision under subsection (1) to declare the corporation or member to have operational control of the facility or to refuse the application.

(5) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the corporation or member which the Regulator has declared to have operational control of the facility to which the declaration relates.

55A Regulator may declare non-group entity has operational control

(1) The Regulator may declare that a non-group entity has operational control of a facility:
(a) on application by the non-group entity; or
(b) on the Regulator's own initiative.

(2) An application must:
(a) identify the facility for which a declaration of operational control is sought; and
(b) include any other information required by the regulations; and
(c) be given in a manner and form approved by the Regulator.

(3) In considering making a declaration that a non-group entity has operational control of a facility, the Regulator must have regard to the matters dealt with in paragraph 11(1)(a) and regulations made for the purposes of that paragraph.

(4) The Regulator must not declare that a non-group entity has operational control of a facility unless the Regulator is satisfied

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that the non-group entity has substantial authority to introduce and implement either or both of the following for the facility:

(a) operating policies;

(b) environmental policies.

(5) The Regulator must notify, in writing, an applicant under paragraph (1)(a) of a decision under subsection (1) to declare the non-group entity to have operational control of the facility or to refuse the application.

(6) If the Regulator makes a declaration under paragraph (1)(b), the Regulator must notify, in writing, the non-group entity which the Regulator has declared to have operational control of the facility to which the declaration relates.

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Division 3—Review of decisions

56 AAT review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of a decision of the Regulator to do any of the following:

(aaa) cancel a nomination under section 11B;

(aab) cancel a nomination under section 11C;

(a) not register a corporation under section 17;

(ab) not register a person under section 18AA;

(b) not deregister a person under section 18B;

(c) make a determination under section 20;

(d) refuse to make a determination under section 20;

(da) refuse to issue a reporting transfer certificate under section 22L;

(db) refuse to give consent to the surrender of the reporting transfer certificate under section 22N;

(dc) cancel a reporting transfer certificate under section 22P;

(dca) issue, or refuse to issue, safeguard mechanism credit units under section 22XNA;

(dcb) require a relinquishment of relinquishable units under section 22XNE;

(dcc) refuse to remit the whole or a part of an amount under subsection 22XNJ(2);

(dd) refuse to make a determination under the safeguard rules;

(de) make a determination under the safeguard rules;

(df) refuse to make a declaration under the safeguard rules;

(dg) make a declaration under the safeguard rules;

(e) refuse an application under section 25;

(ea) refuse to disclose information under section 27;

(f) refuse an application under section 54;

(g) declare a facility under paragraph 54(1)(b);

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(ga) refuse an application under section 54A;

(gb) declare a facility under paragraph 54A(1)(b);

(gc) declare a facility under subsection 54B(1);

(h) refuse an application under section 55;

(i) declare that a corporation has operational control of a facility under paragraph 55(1)(b);

(ia) refuse an application under section 55A;

(ib) declare that a non-group entity has operational control of a facility under paragraph 55A(1)(b);

(j) refuse to register an individual in the register of greenhouse and energy auditors kept under section 75A.

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Division 4—Monitoring compliance

Subdivision A—Authorised officers

57 Appointment of authorised officers

(1) The Regulator may, in writing, appoint:
  (a) an APS employee; or
  (b) an employee of a State or a Territory or of an authority of a State or a Territory;

to be an authorised officer for the purposes of this Division.

(2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Regulator.

Note: Section 122.4 of the *Criminal Code* creates an offence where Commonwealth officers (including persons performing services for or on behalf of the Commonwealth) disclose information in breach of a duty of confidentiality.

58 Identity cards

(1) The Regulator must issue an identity card to an authorised officer in the form specified by the regulations. The identity card must contain a recent photograph of the authorised officer.

(2) A person commits an offence if:
  (a) the person has been issued with an identity card; 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 Regulator.

Penalty: 1 penalty unit.

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

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(3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

Subdivision B—Powers of authorised officers

59 Entering premises to monitor compliance

(1) For the purposes of determining whether this Act has been complied with, an authorised officer may:
  (a) enter any premises:
    (i) during normal business hours; or
    (ii) if the entry is made under a warrant—at any time specified in the warrant; and
  (b) exercise the powers set out in section 60.

(2) An authorised officer is not authorised to enter premises under subsection (1) unless:
  (a) if the premises are business premises—the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
  (b) the entry is made under a warrant.

(3) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

60 Powers of authorised officers in monitoring compliance

(1) The following are the powers that an authorised officer may exercise in relation to premises under section 59:
  (a) the power to search the premises for any thing on the premises that may relate to compliance with this Act;
  (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of this Act;
  (c) the power to examine any thing on the premises that may relate to information provided for the purposes of this Act;

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(d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;

(e) the power to inspect any document on the premises that may relate to information provided for the purposes of this Act;

(f) the power to take extracts from, or make copies of, any such document;

(g) 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;

(h) the power to secure a thing that:

(i) is found during the exercise of monitoring powers on the premises; and

(ii) an authorised officer believes on reasonable grounds affords evidence of a contravention of this Act or of the commission of an offence against the *Crimes Act 1914*;

until a warrant is obtained to seize the thing;

(i) the powers in subsections (2) and (3).

(2) The powers that an authorised officer may exercise in relation to premises under section 59 include the power to operate equipment at premises to see whether:

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it;

contains information that is relevant to assessing the correctness of information provided under this Act.

(3) The powers that an authorised officer may exercise in relation to premises under section 59 include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:

(a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;

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(b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:
  (i) is brought to the premises for the exercise of the power; or
  (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
(c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

61 Authorised officer may request persons to answer questions

(1) If the authorised officer was only 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 related to the operation of this Act that are put by the authorised officer; and
  (b) produce any document requested by the authorised officer that is so related.

(2) If the authorised officer was authorised to enter the premises by a warrant, the authorised officer has power to require the occupier (if the occupier is in or on the premises), or another person who apparently represents the occupier (if that person is in or on the premises), to:
  (a) answer any questions related to the operation of this Act that are put by the authorised officer; and
  (b) produce any document requested by the authorised officer that is so related.

(3) A person commits an offence if the person refuses or fails to comply with a requirement under subsection (2).

  Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(4) An individual is excused from complying with a requirement of subsection (2) if the answer to the question or the production of the

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document might tend to incriminate the individual or expose the individual to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

Subdivision C—Obligations and incidental powers of authorised officers

62 Authorised officer must produce identity card on request

An authorised officer is not entitled to exercise any powers under this Act in relation to premises if:

(a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and

(b) the authorised officer fails to comply with the requirement.

63 Consent

(1) Before obtaining the consent of a person for the purposes of paragraph 59(2)(a), the authorised officer must inform the person that he or she may refuse consent.

(2) An entry of an authorised officer because of the consent of a person is not lawful unless the person voluntarily consented to the entry.

64 Announcement before entry

An authorised officer executing a warrant must, before entering premises under the warrant:

(a) announce that he or she is authorised to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

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65 Details of warrant to be given to occupier etc. before entry

(1) If a warrant is being executed and the occupier of the premises in respect of which it is being executed or another person who apparently represents the occupier is present at the premises, the authorised officer must make available to that person a copy of the warrant.

(2) The authorised officer must identify himself or herself to that person.

(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Note: Monitoring warrants are issued under section 70.

66 Use of electronic equipment in exercising monitoring powers

(1) An authorised officer or a person assisting that officer may operate electronic equipment already at premises in order to exercise the powers set out in section 60 if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.

(2) If the authorised officer or a person assisting believes, on reasonable grounds, that:

(a) there is on the premises material relating to information supplied under this Act that may be accessible by operating electronic equipment on the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.

(3) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

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(4) The equipment may be secured:
   (a) for a period not exceeding 24 hours; or
   (b) until the equipment has been operated by the expert;
whichever first happens.

(5) If an authorised officer or a person assisting believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of the period.

(6) The magistrate may extend the period of time, up to a maximum of a further 48 hours.

(7) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension and the occupier is entitled to be heard in relation to that application.

(8) The provisions of this Part relating to the issue of warrants apply, with such modifications as are necessary, to the issue of an extension.

(9) In this section:

premises means:
   (a) premises that an authorised officer has entered, and remains on, with the consent of the occupier; and
   (b) warrant premises.

67 Compensation for damage to electronic equipment

(1) This section applies if:
   (a) as a result of equipment being operated as mentioned in section 66:
      (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

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(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 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) Compensation is payable out of money appropriated by the Parliament.

(6) For the purposes of subsection (1):

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

Subdivision D—Occupier's rights and responsibilities

68 Occupier entitled to be present during execution of warrant

(1) If a warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the execution of the warrant.

(2) The right to observe the execution of the warrant ceases if the person impedes that execution.

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(3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

69 Occupier to provide authorised officer with all facilities and assistance

(1) The occupier of warrant premises, or another person who apparently represents the occupier, must provide the officer executing the warrant and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers.

(2) A person commits an offence if the person fails to comply with the obligation set out in subsection (1).

Penalty: 30 penalty units.

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

Subdivision E—Warrants

70 Monitoring warrants

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

(2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under this Act or of determining whether this Act has been complied with.

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

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(4) The warrant must:

(a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance as is necessary and reasonable:

(i) to enter the premises; and

(ii) to exercise the powers set out in section 60 in relation to the premises; and

(b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and

(c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purpose for which the warrant is issued.

Subdivision F—Information gathering

71 Power to request information

(1) This section applies to a person if the Regulator has reason to believe that information (the ***compellable information***) relating to whether this Act or the associated provisions has been complied with is in a person's possession, custody or control (whether held electronically or in any other form).

(2) The Regulator may, in writing, require the person to give specified compellable information to the Regulator:

(a) within a specified period of time; and

(b) in a specified form or manner.

(3) The person must not fail to comply with a requirement under this section.

Civil penalty: 50 penalty units.

(4) The person must not, in purported compliance with a requirement under this section, give to the Regulator information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.

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(5) Subsection (3) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:

(a) of a commercial nature; or

(b) subject to an obligation of confidentiality arising from a commercial relationship; or

(c) commercially sensitive.

(6) Subsection (3) does not apply in relation to compellable information if giving the information might tend to incriminate the person or expose the person to a penalty.

72 Prohibitions on disclosure of information do not apply

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

Subdivision G—Greenhouse and energy audits

73 Audits of registered corporations—compliance

(1) This section applies if the Regulator has reasonable grounds to suspect that a registered corporation has contravened, is contravening, or is proposing to contravene, this Act or the associated provisions.

(2) The Regulator may, by written notice given to the corporation, require the corporation to:

(a) appoint as an audit team leader:

(i) a registered greenhouse and energy auditor of its choice; or

(ii) if the Regulator specifies a registered greenhouse and energy auditor in the notice—that auditor; or

(iii) if the Regulator specifies more than one registered greenhouse and energy auditor in the notice—any one of those auditors; and

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(b) arrange for the audit team leader to carry out an audit on one or more aspects of the corporation's compliance with this Act or the associated provisions; and

(c) arrange for the audit team leader to give the corporation a written report setting out the results of the audit; and

(d) give the Regulator a copy of the audit report on or before the day specified in the notice.

(3) The notice must specify the:

(aa) type of audit to be carried out; and

(a) matters to be covered by the audit; and

(b) form of the audit report and the kinds of details it is to contain.

(4) The corporation, and each member of the corporation's group, must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty: 250 penalty units.

(5) If the Regulator gives a corporation written notice under subsection (2), the corporation must comply with the requirements of the notice.

Civil penalty: 1,000 penalty units.

Note: Under section 30 a corporation may be liable for an additional civil penalty for each day after the day mentioned in paragraph (2)(d) for which the corporation fails to provide an audit report in accordance with this section.

73A Audits of persons providing information under section 20—compliance

(1) This section applies if the Regulator has reasonable grounds to suspect that a person required to provide information under section 20 has contravened, is contravening, or is proposing to contravene, this Act or the associated provisions.

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(2) The Regulator may, by written notice given to the person, require the person to:

(a) appoint as an audit team leader:

(i) a registered greenhouse and energy auditor of the person's choice; or

(ii) if the Regulator specifies a registered greenhouse and energy auditor in the notice—that auditor; or

(iii) if the Regulator specifies more than one registered greenhouse and energy auditor in the notice—any one of those auditors; and

(b) arrange for the audit team leader to carry out an audit on one or more aspects of the person's compliance with this Act or the associated provisions; and

(c) arrange for the audit team leader to give the person a written report setting out the results of the audit; and

(d) give the Regulator a copy of the audit report on or before the day specified in the notice.

(3) The notice must specify the:

(a) type of audit to be carried out; and

(b) matters to be covered by the audit; and

(c) form of the audit report and the kinds of details it is to contain.

(4) The person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:

(a) for an individual—50 penalty units; or

(b) otherwise—250 penalty units.

(5) If the Regulator gives a person required to provide information under section 20 written notice under subsection (2), the person must comply with the requirements of the notice.

Civil penalty:

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(a) for an individual—200 penalty units; or
(b) otherwise—1,000 penalty units.

Note: Under section 30, a person may be liable for an additional civil penalty for each day after the day mentioned in paragraph (2)(d) for which the person fails to provide an audit report in accordance with this section.

74 Audits of registered corporations—other

(1) The Regulator may appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of a registered corporation's compliance with one or more aspects of this Act or the associated provisions.

(2) The Regulator must give written notice to the corporation of a decision to appoint an audit team leader under subsection (1). The notice must:
(a) specify the audit team leader; and
(b) specify the period within which the audit is to be undertaken; and
(ba) specify the type of audit to be carried out; and
(c) specify the matters to be covered by the audit; and
(d) be given to the corporation at a reasonable time before the audit is to be undertaken.

(2A) The corporation, and each member of the corporation's group, must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty: 250 penalty units.

(3) If a corporation is given a notice under subsection (2), the corporation must arrange for the audit team leader to carry out the audit.

Civil penalty: 250 penalty units.

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74AA Audit of persons providing reports under section 19, 22G, 22X or 22XB

Scope

(1) This section applies if:

(a) a person is required to provide a report (the ***regulatory report***) under section 19, 22G, 22X or 22XB for a financial year in relation to one or more facilities; and

(b) for that financial year, the facility, or at least one of those facilities, was:

(i) a designated large facility; or

(ii) a facility of a kind specified by the safeguard rules for the purposes of this subparagraph; and

(c) the conditions set out in the safeguard rules are satisfied.

Audit

(2) The person must:

(a) appoint as an audit team leader a registered greenhouse and energy auditor of the person's choice; and

(b) arrange for the audit team leader to carry out an audit of:

(i) the regulatory report; and

(ii) such other matters (if any) relating to the regulatory report as are specified in the safeguard rules; and

(iii) if the regulatory report was under section 19—the person's compliance with section 22 (about record-keeping) in relation to the financial year and so much of the report as relates to facilities to which paragraph (1)(b) of this section applies; and

(iv) if the regulatory report was under section 22G—the person's compliance with section 22H (about record-keeping) in relation to the financial year; and

(v) if the regulatory report was under section 22X—the person's compliance with section 22XA (about record-keeping) in relation to the financial year; and

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(vi) if the regulatory report was under section 22XB—the person's compliance with section 22XC (about record-keeping) in relation to the financial year; and

(c) arrange for the audit team leader to give the person a written report setting out the results of the audit; and

(d) give the Regulator a copy of the audit report:

(i) on the day on which the regulatory report is provided to the Regulator; and

(ii) in the manner specified in the safeguard rules.

Civil penalty:

(a) for an individual—200 penalty units; or

(b) otherwise—1,000 penalty units.

(3) The safeguard rules may specify:

(a) the type of audit to be carried out; and

(b) the matters to be covered by the audit; and

(c) the form of the audit report and the kinds of details it is to contain.

(4) The person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:

(a) for an individual—50 penalty units; or

(b) otherwise—250 penalty units.

74A Audits of persons providing information under section 20—other

(1) The Regulator may appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of the compliance of a person required to provide information under section 20 with one or more aspects of this Act or the associated provisions.

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(2) The Regulator must give written notice to the person of a decision to appoint an audit team leader under subsection (1). The notice must:
  (a) specify the audit team leader; and
  (b) specify the period within which the audit is to be undertaken; and
  (c) specify the type of audit to be carried out; and
  (d) specify the matters to be covered by the audit; and
  (e) be given to the person at a reasonable time before the audit is to be undertaken.

(3) The person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

  Civil penalty:
  (a) for an individual—50 penalty units; or
  (b) otherwise—250 penalty units.

(4) If a person required to provide information under section 20 is given a notice under subsection (2), the person must arrange for the audit team leader to carry out the audit.

  Civil penalty:
  (a) for an individual—50 penalty units; or
  (b) otherwise—250 penalty units.

74B Audits of certain entities—compliance

(1) For the purposes of this section, a person is a ***relevant person*** if:
  (a) either:
    (i) the person is the responsible member mentioned in subsection 22X(1); or
    (ii) the person is the responsible emitter for a facility that is or was a designated large facility in relation to a financial year; and

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(b) the person is not a registered corporation; and
(c) the Regulator has reasonable grounds to suspect that the person has contravened, is contravening, or is proposing to contravene, this Act or the associated provisions.

(2) The Regulator may, by written notice given to a relevant person, require the relevant person to:
(a) appoint as an audit team leader:
(i) a registered greenhouse and energy auditor of the relevant person's choice; or
(ii) if the Regulator specifies a registered greenhouse and energy auditor in the notice—that auditor; or
(iii) if the Regulator specifies more than one registered greenhouse and energy auditor in the notice—any one of those auditors; and
(b) arrange for the audit team leader to carry out an audit on one or more aspects of the relevant person's compliance with this Act or the associated provisions; and
(c) arrange for the audit team leader to give the relevant person a written report setting out the results of the audit; and
(d) give the Regulator a copy of the audit report on or before the day specified in the notice.

(3) The notice must specify:
(a) the type of audit to be carried out; and
(b) the matters to be covered by the audit; and
(c) the form of the audit report and the kinds of details it is to contain.

(4) The relevant person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:
(a) for an individual—50 penalty units; or
(b) otherwise—250 penalty units.

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(5) If the Regulator gives the relevant person written notice under subsection (2), the relevant person must comply with the requirements of the notice.

Civil penalty:

(a) for an individual—200 penalty units; or

(b) otherwise—1,000 penalty units.

Note: Under section 30, a relevant person may be liable for an additional civil penalty for each day after the day mentioned in paragraph (2)(d) for which the relevant person fails to provide an audit report in accordance with this section.

74C Audits of certain entities—other

(1) For the purposes of this section, a person is a ***relevant person*** if the person:

(a) either:

(i) the person is the responsible member mentioned in subsection 22X(1); or

(ii) the person is the responsible emitter for a facility that is or was a designated large facility in relation to a financial year; and

(b) is not a registered corporation.

(2) The Regulator may appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of a relevant person's compliance with one or more aspects of this Act or the associated provisions.

(3) The Regulator must give written notice to the relevant person of a decision to appoint an audit team leader under subsection (2). The notice must:

(a) specify the audit team leader; and

(b) specify the period within which the audit is to be undertaken; and

(c) specify the type of audit to be carried out; and

(d) specify the matters to be covered by the audit; and

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(e) be given to the relevant person at a reasonable time before the audit is to be undertaken.

(4) The relevant person must provide the audit team leader and any audit team members with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Civil penalty:
(a) for an individual—50 penalty units; or
(b) otherwise—250 penalty units.

(5) If a relevant person is given a notice under subsection (3), the relevant person must arrange for the audit team leader to carry out the audit.

Civil penalty:
(a) for an individual—200 penalty units; or
(b) otherwise—1,000 penalty units.

75 Conduct of audits

(1) The Minister may determine, by legislative instrument, requirements to be met by registered greenhouse and energy auditors in:
(a) preparing for and carrying out greenhouse and energy audits; and
(b) preparing audit reports in relation to greenhouse and energy audits; and
(c) preparing for and carrying out ERF audits; and
(d) preparing ERF audit reports; and
(e) preparing for and carrying out safeguard audits; and
(f) preparing safeguard audit reports; and
(g) preparing for and carrying out biodiversity audits; and
(h) preparing biodiversity audit reports.

(2) The determination may set out different requirements for:
(a) different types of audits; and

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(b) different types of audit reports.

(3) A registered greenhouse and energy auditor must comply with requirements determined under subsection (1).

75A Register of greenhouse and energy auditors

(1) The Regulator must cause a register of greenhouse and energy auditors to be kept for the purposes of this Act, the *Nature Repair Act 2023* and the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

(2) The Regulator must register an individual in the register if the individual:
   (a) has applied for registration in accordance with regulations under subsection (5); and
   (b) meets such requirements as to qualifications, knowledge, expertise, competence, independence and other matters as are set out in the regulations for the purposes of this paragraph or in a legislative instrument made under the regulations in accordance with subsection (4).

(3) If an individual who has applied for registration in the register does not meet the requirements referred to in paragraph (2)(b), the Regulator must refuse to register the individual.

(4) Regulations made for the purposes of paragraph (2)(b) may provide for the Regulator to make a legislative instrument setting out:
   (a) some or all of the requirements that could otherwise be set out in the regulations; or
   (b) ways in which requirements set out in the regulations may be met.

(5) The regulations may provide for any of the following:
   (a) the form and content of the register;
   (b) publication of the register;

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(c) the form and content of applications for registration and the manner in which applications are to be made;
(d) fees to be paid in connection with registration (including ongoing or recurrent fees to maintain registration);
(e) requirements to be met in order to maintain registration;
(f) review of registration;
(g) suspension of registration in prescribed circumstances;
(h) deregistration in prescribed circumstances;
(ha) inspection of the performance of registered greenhouse and energy auditors in carrying out biodiversity audits;
(i) inspection of the performance of registered greenhouse and energy auditors in carrying out greenhouse and energy audits;
(ia) inspection of the performance of registered greenhouse and energy auditors in carrying out ERF audits;
(ib) inspection of the performance of registered greenhouse and energy auditors in carrying out safeguard audits;
(j) other matters in connection with registration in the register.

(6) A fee under paragraph (5)(d) must not be such as to amount to taxation.

(7) The Regulator may, by written instrument, delegate to another person (whether or not an SES employee or acting SES employee) any of the Regulator's functions or powers under this section or regulations under this section.

(8) However, the Regulator must not delegate the power to make a legislative instrument as mentioned in subsection (4) other than to an SES employee or acting SES employee.

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Part 7—Miscellaneous

76 Modification of National Environment Protection (National Pollutant Inventory) Measure

A national environment protection measure made under section 14 of the *National Environment Protection Council Act 1994* does not apply to the extent that it requires the reporting or disclosure of information relating to:

(a) greenhouse gas emissions; or

(b) greenhouse gas projects.

76A Periodic reviews of operation of this Act etc.

(1) The Climate Change Authority must conduct reviews of the operation of:

(a) this Act; and

(b) legislative instruments under this Act.

Public consultation

(2) A review under subsection (1) must make provision for public consultation.

Report

(3) The Climate Change Authority must:

(a) give the Minister a report of the review; and

(b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.

(4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

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First review

(5) The first review under subsection (1) must be completed during the period:

(a) beginning at the start of 30 June 2016; and

(b) ending at the end of 31 December 2018.

Subsequent reviews

(6) Each subsequent review under subsection (1) must be completed within 5 years after the deadline for completion of the previous review.

(7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

Recommendations

(8) A report of a review under subsection (1) may set out recommendations to the Commonwealth Government.

(9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

(10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

(11) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

Government response to recommendations

(12) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government:

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(a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and

(b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

(13) The Commonwealth Government's response to the recommendations may have regard to the views of the following:

(a) the Climate Change Authority;

(b) the Regulator;

(c) such other persons as the Minister considers relevant.

76B Special reviews of operation of this Act etc.

Scope

(1) This section applies if:

(a) the Minister, by written instrument given to the Chair of the Climate Change Authority, requests the Climate Change Authority to conduct a review under this section of such matters as are specified in the instrument; and

(b) the matters specified in the instrument are covered by subsection (4).

Review

(2) The Climate Change Authority must conduct a review of those matters.

Consultation

(3) In conducting a review, the Climate Change Authority must make provision for public consultation.

Covered matters

(4) This subsection covers the operation of:

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(a) this Act; and
(b) legislative instruments under this Act.

Report

(5) The Climate Change Authority must:
(a) give the Minister a report of the review; and
(b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.

(6) The Minister must cause copies of a report under subsection (5) to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Recommendations

(7) A report of a review under subsection (2) may set out recommendations to the Commonwealth Government.

(8) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.

(9) Subsection (8) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.

(10) If a report of a review under subsection (2) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

Government response to recommendations

(11) If a report of a review under subsection (2) sets out one or more recommendations to the Commonwealth Government:
(a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the

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Commonwealth Government's response to each of the recommendations; and

(b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.

(12) The Commonwealth Government's response to the recommendations may have regard to the views of the following:

(a) the Climate Change Authority;

(b) the Regulator;

(c) such other persons as the Minister considers relevant.

77 Regulations

(1) 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.

(2) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(3) Subsection (2) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(4) If the regulations make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.

(5) Subsection (4) does not apply if the publication would infringe copyright.

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(6) The regulations may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Greenhouse and Energy Reporting Act 2007	175, 2007	28 Sept 2007	s 3–77: 29 Sept 2007 Remainder: 28 Sept 2007	
National Greenhouse and Energy Reporting Amendment Act 2008	84, 2008	15 Sept 2008	Sch 1 (items 1, 8–10, 12, 23): 15 Mar 2009 Sch 1 (items 2–7, 11, 13–22, 24–35): 16 Sept 2008 Remainder: 15 Sept 2008	Sch 1 (item 35)
National Greenhouse and Energy Reporting Amendment Act 2009	87, 2009	18 Sept 2009	Sch 1: 16 Oct 2009 Sch 2 (items 1–16): 19 Sept 2009 Sch 2 (items 17–33): does not commence (s 2(1) items 4, 5) Remainder: 18 Sept 2009	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (item 797) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Carbon Credits (Consequential Amendments) Act 2011	102, 2011	15 Sept 2011	Sch 1 (items 12–16, 19): 8 Dec 2011 (s 2(1)) Sch 2: 16 Sept 2011	Sch 1 (item 19)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Clean Energy (Consequential Amendments) Act 2011	132, 2011	18 Nov 2011	Sch 1 (items 106–155, 158–192, 214, 219): 2 Apr 2012 (s 2(1)) Sch 1 (items 261A–278, 280–301, 303–305, 307–310, 312–316, 319–334, 336–371, 375–381, 384–415A, 452–455): 1 July 2012	Sch 1 (items 214, 219, 452–455)
as amended by				
Safeguard Mechanism (Crediting) Amendment Act 2023	14, 2023	11 Apr 2023	Sch 3 (item 1): 12 Apr 2023 (s 2(1) item 2)	—
Clean Energy Legislation Amendment Act 2012	84, 2012	28 June 2012	Sch 1 (items 24–59): 1 July 2012 (s 2(1) item 2)	Sch 1 (item 59)
Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012	204, 2012	13 Dec 2012	Sch 1 (items 94, 95): 14 Dec 2012 Sch 1 (items 97–106): 1 July 2013	Sch 1 (item 106)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (item 420): 12 Apr 2013 (s 2(1))	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 32): 24 June 2014	—
Clean Energy Legislation (Carbon Tax Repeal) Act 2014	83, 2014	17 July 2014	Sch 1 (items 196–312, 337): 1 July 2014 (s 2(1) item 2)	Sch1 (item 337)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Carbon Farming Initiative Amendment Act 2014	119, 2014	25 Nov 2014	Sch 1 (items 377–393): 13 Dec 2014 (s 2(1) item 2 and F2014L01691) Sch 2 (items 1–12, 13–61): 1 July 2016 (s 2(1) item 3)	Sch 1 (items 382–393) and Sch 2 (items 60, 61)
Insolvency Law Reform Act 2016	11, 2016	29 Feb 2016	Sch 2 (items 300–304): 1 Mar 2017 (s 2(1) items 5–7)	—
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 2 (items 22, 23): 29 Dec 2018 (s 2(1) item 3)	—
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 77–81): 30 Aug 2019 (s 2(1) item 2)	Sch 1 (item 81)
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 615): 1 Sept 2021 (s 2(1) item 5)	—
Climate Change (Consequential Amendments) Act 2022	38, 2022	13 Sept 2022	Sch 1 (items 45, 46): 14 Sept 2022 (s 2(1) item 1)	—
Safeguard Mechanism (Crediting) Amendment Act 2023	14, 2023	11 Apr 2023	Sch 1 (items 1–63, 67) and Sch 3 (items 4–17): 12 Apr 2023 (s 2(1) item 2)	Sch 1 (item 67) and Sch 3 (item 17)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023	74, 2023	20 Sept 2023	Sch 1 (item 73–77): awaiting commencement (s 2(1) item 2)	Sch 1 (item 77)
Nature Repair (Consequential Amendments) Act 2023	122, 2023	14 Dec 2023	Sch 1 (items 22–25): 15 Dec 2023 (s 2(1) item 2)	—

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Division 1	
s 3	am No 132, 2011; No 83, 2014; No 119, 2014; No 38, 2022; No 14, 2023
s 4	am No 132, 2011; No 83, 2014
s 5	am No 132, 2011; No 83, 2014
s 5A	ad No 132, 2011
s 6	rs No 132, 2011
s 6A	ad No 132, 2011
	am No 119, 2014; No 57, 2019
s 6B	ad No 132, 2011
	am No 119, 2014
	rep No 57, 2019
s 6C	ad No 132, 2011
Division 2	
s 7	am No 84, 2008; No 87, 2009; No 46, 2011; No 102, 2011; No 132, 2011; No 84, 2012; No 204, 2012; No 13, 2013; No 31, 2014; No 83, 2014; No 119, 2014; No 11, 2016; No 57, 2019; No 13, 2021; No 38, 2022; No 14, 2023; No 122, 2023
s 7A	ad No 132, 2011
	am No 83, 2014
s 7B	ad No 132, 2011
	am No 84, 2012
	rep No 83, 2014
s 7C	ad No 132, 2011
	am No 84, 2012
	rep No 83, 2014
s 8	am No 132, 2011; No 83, 2014
s 9	am No 132, 2011; No 83, 2014; No 119, 2014; No 14, 2023
s 10	am No 84, 2008; No 132, 2011; No 204, 2012; No 83, 2014; No 14, 2023

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Endnote 4—Amendment history

Provision affected	How affected
s 11	am No 132, 2011; No 84, 2012; No 83, 2014; No 119, 2014
s 11A	ad No 132, 2011
	am No 83, 2014; No 119, 2014
ss. 11AA, 11AB	ad. No. 132, 2011
	rep. No. 84, 2012
s. 11B	ad. No. 132, 2011
	rs. No. 84, 2012
	am No 83, 2014; No 119, 2014; No 11, 2016
s. 11C	ad. No. 132, 2011
	rs. No. 84, 2012
	rep No 83, 2014
	ad No 119, 2014
	am No 11, 2016
s. 11D	ad. No. 84, 2012
	am No 83, 2014
Part 2	
Division 1	
Subdivision A	
Subdivision A heading	ad No. 132, 2011
	rep No 83, 2014
	ad No 119, 2014
s. 12	am. No. 84, 2008; No. 204, 2012
s. 13	am. No. 87, 2009; Nos. 102 and 132, 2011; No 83, 2014
s. 14	am. No. 84, 2008
s 15	am No 84, 2008; No 132, 2011; No 74, 2023
Subdivision B	
Subdivision B heading	am No 14, 2023
Subdivision B	ad. No. 132, 2011
	rep No 83, 2014
	ad No 119, 2014
s. 15A	ad. No. 132, 2011

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Provision affected	How affected
	rep No 83, 2014
s. 15AA	ad. No. 132, 2011
	rep No 83, 2014
s 15B	ad No 119, 2014
	am No 14, 2023
Division 2	
Division 2	rs No 132, 2011
s. 16	am. No. 84, 2008; No. 87, 2009; No. 132, 2011
	rs. No. 132, 2011
	am No 119, 2014
Division 3	
Division 3 heading	rs No. 132, 2011
s. 17	am. No. 84, 2008; No. 87, 2009; No. 132, 2011
s. 18	am. No. 87, 2009; No. 132, 2011
	rep. No. 132, 2011
Division 4	
Division 4	ad No. 132, 2011
	rep No 83, 2014
	ad No 119, 2014
s. 18A	ad No. 132, 2011
	rep No 83, 2014
s 18AA	ad No 119, 2014
Division 5	
Division 5	ad. No. 132, 2011
s 18B	ad No 132, 2011
	am No 83, 2014; No 119, 2014; No 14, 2023
Part 3	
Part 3 heading	rs No. 132, 2011
s. 19	am. No. 84, 2008; No. 87, 2009; Nos. 102 and 132, 2011; No 83, 2014
s 20	am No 84, 2008; No 132, 2011; No 74, 2023
s. 21	am. No. 84, 2008; No. 132, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s. 21A	ad. No. 84, 2008
	am. No. 132, 2011
s. 22	am. No. 87, 2009; No. 132, 2011; No 83, 2014
Part 3A	ad. No. 132, 2011
	rep No 83, 2014
s 22A	ad. No. 132, 2011
	am. No. 84, 2012
	rep No 83, 2014
s 22AA	ad. No. 132, 2011
	am. No. 84, 2012
	rep No 83, 2014
s 22B	ad. No. 132, 2011
	rep No 83, 2014
s 22C	ad. No. 132, 2011
	rep No 83, 2014
Part 3D	ad. No. 132, 2011
	rep No 83, 2014
s 22E	ad. No. 132, 2011
	rep No 83, 2014
s 22F	ad. No. 132, 2011
	rep No 83, 2014
Part 3E	
Part 3E	ad. No. 87, 2009
Division 1	
s. 22G	ad. No. 87, 2009
	am. Nos. 102 and 132, 2011
s. 22H	ad. No. 87, 2009
	am. Nos. 102 and 132, 2011
Division 2	
s. 22J	ad. No. 87, 2009
s. 22K	ad. No. 87, 2009

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Provision affected	How affected
	am. No. 132, 2011; No. 204, 2012
s. 22KA	ad. No. 87, 2009
	am. No. 132, 2011
s. 22L	ad. No. 87, 2009
	am. Nos. 102 and 132, 2011
s. 22M	ad. No. 87, 2009
	am. No. 102, 2011
s. 22N	ad. No. 87, 2009
	am. No. 132, 2011
s. 22P	ad. No. 87, 2009
	am. No. 132, 2011; No 11, 2016
s. 22Q	ad. No. 87, 2009
s. 22R	ad. No. 87, 2009
Part 3F	
Part 3F	ad No 132, 2011
s. 22X	ad. No. 132, 2011
	am No 83, 2014
s. 22XA	ad. No. 132, 2011
Part 3G	
Part 3G	ad No 119, 2014
s 22XB	ad No 119, 2014
	am No 14, 2023
s 22XC	ad No 119, 2014
Part 3H	
Part 3H	ad No 119, 2014
Division 1	
s 22XD	ad No 119, 2014
	am No 14, 2023
Division 2	
s 22XE	ad No 119, 2014
s 22XF	ad No 119, 2014

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Endnote 4—Amendment history

Provision affected	How affected
	am No 14, 2023
Division 3	
s 22XG	ad No 119, 2014
s 22XH	ad No 119, 2014
s 22XI	ad No 119, 2014
s 22XJ	ad No 119, 2014
s 22XK	ad No 119, 2014
	am No 14, 2023
s 22XL	ad No 119, 2014
s 22XM	ad No 119, 2014
	am No 14, 2023
Division 4	
s 22XN	ad No 119, 2014
	am No 14, 2023
Division 4A	
Division 4A	ad No 14, 2023
Subdivision A	
s 22XNA	ad No 14, 2023
s 22XNB	ad No 14, 2023
s 22XNC	ad No 14, 2023
s 22XND	ad No 14, 2023
Subdivision B	
s 22XNE	ad No 14, 2023
s 22XNF	ad No 14, 2023
s 22XNG	ad No 14, 2023
Subdivision C	
s 22XNH	ad No 14, 2023
s 22XNI	ad No 14, 2023
s 22XNJ	ad No 14, 2023
s 22XNK	ad No 14, 2023
s 22XNL	ad No 14, 2023

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Provision affected	How affected
s 22XNM	ad No 14, 2023
s 22XNN	ad No 14, 2023
Division 5	
s 22XO	ad No 119, 2014
s 22XP	ad No 119, 2014
s 22XQ	ad No 119, 2014
s 22XR	ad No 119, 2014
	am No 14, 2023
s 22XS	ad No 119, 2014
	am No 14, 2023
Part 4	
s 23	am No 87, 2009; No 132, 2011; No 119, 2014; No 67, 2018; No 14, 2023
s 24	am No 84, 2008; No 87, 2009; No 102, 2011; No 132, 2011; No 84, 2012; No 83, 2014; No 14, 2023
s 25	am No 87, 2009; No 132, 2011; No 83, 2014; No 119, 2014; No 14, 2023
s. 26	am. No. 102, 2011
	rep. No. 132, 2011
s 27	am No 132, 2011; No 14, 2023
s. 28	am. No. 84, 2008; No. 132, 2011
Part 5	
Division 1	
Subdivision A	
s 30	am No 87, 2009; No 132, 2011; No 84, 2012; No 83, 2014; No 14, 2023
s. 31	am. No. 132, 2011
Division 2	
s 39	am No. 132, 2011
s 40	am No. 132, 2011
s 41	rs No 119, 2014
	am No 14, 2023
s. 42	am. No. 132, 2011

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Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s. 45	am. No. 132, 2011; No 119, 2014
s. 46	am. No. 132, 2011
Division 4	
Division 4 heading	rs No. 132, 2011
s 47	am No. 132, 2011
	ed C20
s 48	am No. 132, 2011
Division 5	
Division 5	ad No 119, 2014
s 49	ad No 119, 2014
	am No 14, 2023
Part 6	
Division 1	rep. No. 132, 2011
ss. 49–52	rep. No. 132, 2011
s. 53	am. No. 84, 2008
	rep. No. 132, 2011
Division 2	
Division 2 heading	rs No. 132, 2011
s. 54	am. No. 132, 2011
s. 54A	ad. No. 132, 2011
	rep No 83, 2014
	ad No 119, 2014
s 54B	ad No 14, 2023
s. 55	am. No. 132, 2011
s. 55A	ad. No. 132, 2011
	rep No 83, 2014
	ad No 119, 2014
Division 3	
s 56	am No 87, 2009; No 132, 2011; No 84, 2012; No 83, 2014; No 119, 2014; No 14, 2023

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Provision affected	How affected
Division 4	
Subdivision A	
s 57	am No 132, 2011; No 67, 2018
s 58	am No 132, 2011; No 74, 2023
Subdivision B	
s. 61	am. No. 132, 2011
Subdivision D	
s. 69	am. No. 132, 2011
Subdivision F	
s 71	am No 132, 2011; No 14, 2023
Subdivision G	
Subdivision G heading	rs No. 87, 2009
s 73	am No 84, 2008; No 87, 2009; No 132, 2011; No 14, 2023
s 73A	ad No 87, 2009
	am No 132, 2011; No 14, 2023
s 74	am No 84, 2008; No 87, 2009; No 132, 2011; No 14, 2023
s 74AA	ad No 132, 2011
	rep No 83, 2014
	ad No 14, 2023
s 74A	ad No 87, 2009
	am No 132, 2011; No 14, 2023
s 74B	ad No 132, 2011
	am No 83, 2014; No 14, 2023
s 74C	ad No 132, 2011
	am No 83, 2014; No 14, 2023
s 75	rs No 87, 2009; No 102, 2011; No 119, 2014; No 119, 2014
	am No 122, 2023
s 75A	ad No 87, 2009
	am No 102, 2011; No 132, 2011; No 14, 2023; No 122, 2023
Part 7	
s. 76A	ad. No. 132, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s. 76B	ad. No. 132, 2011
s 77	am No 14, 2023

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