



Carbon Credits (Carbon Farming Initiative) Act 2011

No. 101, 2011

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About this compilation

This compilation

This is a compilation of the *Carbon Credits (Carbon Farming Initiative) Act 2011* that shows the text of the law as amended and in force on 13 December 2014 (the **compilation date**).

This compilation was prepared on 17 December 2014.

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 ComLaw (www.comlaw.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 series page on ComLaw 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.

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 series page on ComLaw 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 about projects to remove carbon dioxide from the atmosphere and projects to avoid emissions of greenhouse gases, and for other purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

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 this Act receives the Royal Assent.	15 September 2011

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Sections 3 to 307	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the later of:</p> <p>(a) the day the <i>Australian National Registry of Emissions Units Act 2011</i> receives the Royal Assent; and</p> <p>(b) the day the <i>Carbon Credits (Consequential Amendments) Act 2011</i> receives the Royal Assent.</p> <p>However, if any of the provision(s) do not commence within the period of 6 months beginning on the later of:</p> <p>(c) the day the <i>Australian National Registry of Emissions Units Act 2011</i> receives the Royal Assent; and</p> <p>(d) the day the <i>Carbon Credits (Consequential Amendments) Act 2011</i> receives the Royal Assent;</p> <p>they commence on the day after the end of that period.</p>	<p>8 December 2011</p> <p>(see F2011L02581)</p>

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Objects

- (1) This section sets out the objects of this Act.

Section 4

Climate Change Convention and Kyoto Protocol etc.

- (2) The first object of this Act is to remove greenhouse gases from the atmosphere, and avoid emissions of greenhouse gases, in order to meet Australia's obligations under any or all of the following:
- (a) the Climate Change Convention;
 - (b) the Kyoto Protocol;
 - (c) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

Incentives

- (3) The second object of this Act is to create incentives for people to carry on certain offsets projects.

Carbon abatement

- (4) The third object of this Act is to increase carbon abatement in a manner that:
- (a) is consistent with the protection of Australia's natural environment; and
 - (b) improves resilience to the effects of climate change.

Purchase of carbon abatement by the Commonwealth

- (5) The fourth object of this Act is to authorise the purchase by the Commonwealth of units that represent carbon abatement.

4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up a scheme for the issue of Australian carbon credit units in relation to eligible offsets projects.
- Australian carbon credit units and certain other types of units may be purchased by the Commonwealth.

Section 5

- An Australian carbon credit unit is personal property and is generally transferable.
- The main eligibility requirements for eligible offsets projects are as follows:
 - (a) the project must be carried out in Australia;
 - (b) the project must be covered by a methodology determination made under this Act.
- A methodology determination is made having regard to the offsets integrity standards set out in this Act.
- This Act is administered by the Clean Energy Regulator.

5 Definitions

In this Act:

25-year permanence period project has the meaning given by paragraph 27(3)(f).

100-year permanence period, in relation to an eligible offsets project, has the meaning given by section 87.

100-year permanence period project has the meaning given by paragraph 27(3)(e).

Aboriginal peoples has the same meaning as in the *Native Title Act 1993*.

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

agricultural emissions avoidance project means a project to avoid any of the following emissions:

- (a) an emission of methane from the digestive tract of livestock;

- (b) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the decomposition of:
 - (iii) livestock urine; or
 - (iv) livestock dung;
- (c) an emission of methane from:
 - (i) rice fields; or
 - (ii) rice plants;
- (d) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the burning of:
 - (iii) savannas; or
 - (iv) grasslands;
- (e) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the burning of:
 - (iii) crop stubble in fields; or
 - (iv) crop residues in fields; or
 - (v) sugar cane before harvest;
- (f) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from soil.

Paragraph (f) does not apply to an emission that is attributable to the operation of a landfill facility.

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

Section 5

applicable carbon sequestration right, in relation to a project area for a sequestration offsets project, has the meaning given by section 43.

applicable methodology determination, in relation to an offsets project, means the methodology determination that is applicable to the project.

Note: See also sections 124 to 130.

area-based emissions avoidance project has the meaning given by section 53A.

area-based offsets project means an offsets project that is:

- (a) a sequestration offsets project; or
- (b) an area-based emissions avoidance project.

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

associated provisions means the following provisions:

- (a) the provisions of the regulations;
- (aa) the provisions of the legislative rules;
- (b) 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) the regulations; or
 - (iii) the legislative rules.

audit team leader means a registered greenhouse and energy auditor appointed under any of the following provisions:

- (a) paragraph 13(1)(e);
- (aa) paragraph 13(1)(ea);
- (ab) paragraph 13(1)(eb);
- (b) paragraph 23(1)(d);
- (c) paragraph 76(4)(c);
- (ca) paragraph 76(4)(ca);

(cb) paragraph 76(4)(cb);

(d) section 214;

(e) section 215.

Australia, when used in a geographical sense, includes the external Territories.

Australian carbon credit unit means a unit issued under section 147.

Australian police force means:

(a) the Australian Federal Police; or

(b) a police force or police service of a State or Territory.

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

benchmark sequestration level has the meaning given by subsection 97(8).

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 meaning given by section 20B.

carbon abatement contractor has the meaning given by section 20B.

carbon abatement purchasing process has the meaning given by section 20F.

carbon dioxide equivalent, of an amount of greenhouse gas, means the carbon dioxide equivalence (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*) of the amount of the gas.

carbon maintenance obligation has the meaning given by paragraph 97(2)(a).

Section 5

certificate of entitlement means a certificate issued under section 15.

civil penalty order means an order under subsection 221(1).

civil penalty provision means a provision declared by this Act to be a civil penalty provision.

Climate Change Convention means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, as amended and in force for Australia from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 2 ([1994] ATS 2). In 2011, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

common law holders, in relation to native title land, has the same meaning as in the *Native Title Act 1993*.

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

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

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

Commonwealth relinquished units account means the Commonwealth Registry account designated as the Commonwealth relinquished units account.

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

crediting period, in relation to an eligible offsets project, means:

- (a) the crediting period for the project worked out under section 69 or 71; or
- (b) a crediting period for the project worked out under section 70.

Note: Sections 70 and 71 deal with transitional matters.

crediting period extension review has the meaning given by section 255A.

Crown land means land that is the property of:

- (a) the Commonwealth, a State or a Territory; or
- (b) a statutory authority of:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) a Territory.

For this purpose, it is immaterial whether the land is:

- (c) subject to a lease or licence; or
- (d) covered by a reservation, proclamation, dedication, condition, permission or authority, made or conferred by the Commonwealth, the State or the Territory; or
- (e) covered by the making, amendment or repeal of legislation of the Commonwealth, the State or the Territory under which the whole or a part of the land is to be used for a public purpose or public purposes; or
- (f) held on trust for the benefit of another person; or
- (g) subject to native title.

Crown lands Minister:

- (a) in relation to a State—means the Minister of the State who, under the regulations or the legislative rules, is taken to be the Crown lands Minister of the State; or
- (b) in relation to the Northern Territory—means the Minister of the Northern Territory who, under the regulations or the legislative rules, is taken to be the Crown lands Minister of the Northern Territory; or
- (c) in relation to the Australian Capital Territory—means the Minister of the Australian Capital Territory who, under the regulations or the legislative rules, is taken to be the Crown lands Minister of the Australian Capital Territory; or
- (d) in relation to a Territory other than the Northern Territory or the Australian Capital Territory—means the person who,

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under the regulations or the legislative rules, is taken to be the Crown lands Minister of the Territory.

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

designated savanna project means a project to avoid the emission of methane or nitrous oxide from the burning of savannas.

director includes a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

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 communication means a communication by means of guided and/or unguided electromagnetic energy.

electronic notice transmitted to the Regulator has the meaning given by section 7.

eligible carbon abatement from an offsets project means carbon abatement that:

- (a) results from the carrying out of the project; and
- (b) 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 subparagraph (b)(i), if the Doha Amendment is not in force for Australia, the Doha Amendment is taken to be in force for Australia.

eligible carbon credit unit means:

- (a) a Kyoto Australian carbon credit unit; or
- (b) a prescribed eligible carbon unit.

eligible interest, in relation to an area of land, has the meaning given by section 43, 44, 45 or 45A.

eligible offsets project has the meaning given by subsection 27(2).

eligible voluntary action means:

- (a) making an application; or
- (b) giving information in connection with an application; or
- (c) withdrawing an application; or
- (d) giving a notice (including an electronic notice); or
- (e) making a submission; or
- (f) making a request; or
- (g) giving information in connection with a request;

to the Regulator, where the application, information, notice, submission or request is permitted, but not required, to be made, given or withdrawn, as the case may be, under this Act, the regulations or the legislative rules.

emission of greenhouse gas means the release of greenhouse gas into the atmosphere.

Emissions Reduction Fund Register means the register kept under section 167.

emissions avoidance offsets project has the meaning given by section 53.

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Emissions Reduction Assurance Committee means the committee continued in existence by section 254.

Emissions Reduction Assurance Committee member means a member of the Emissions Reduction Assurance Committee, and includes the Chair of the Emissions Reduction Assurance Committee.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

entrusted public official means:

- (f) an audit team leader; or
- (g) a person assisting an audit team leader; or
- (h) an Emissions Reduction Assurance Committee member; or
- (i) a person assisting the Emissions Reduction Assurance Committee under section 269.

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

excluded offsets project has the meaning given by section 56.

exclusive possession native title land means native title land, where the native title confers a right of exclusive possession over the land.

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.

extended accounting period has the meaning given by section 7A.

externally-administered body corporate has the same meaning as in the *Corporations Act 2001*.

Federal Court means the Federal Court of Australia.

fit and proper person test has the meaning given by section 60.

foreign account, when used in relation to an Australian carbon credit unit, means an account kept within a foreign registry.

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

freehold land rights land means land, where:

- (a) a freehold estate exists over the land, and the grant of the freehold estate took place under a law of a State or a Territory that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (b) a freehold estate exists over the land, and the grant of the freehold estate took place under a law of the Commonwealth that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (c) the land is vested in a person, and the vesting took place under a law of the Commonwealth that makes provision for the vesting of land only in, or for the benefit of, Aboriginal peoples or Torres Strait Islanders.

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greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

hold an Australian carbon credit unit: a person **holds** an Australian carbon credit unit if the person is the registered holder of the unit.

indigenous land use agreement has the same meaning as in the *Native Title Act 1993*.

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

inspector means a person appointed as an inspector under section 196.

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 an Australian carbon credit unit, means issue under section 147.

joint implementation project means a project that is treated as a joint implementation project for the purposes of the relevant provisions of the Kyoto rules.

Kyoto abatement deadline means:

- (a) 30 June 2012; or
- (b) if a later day is specified in the regulations or the legislative rules—the later day.

Kyoto Australian carbon credit unit means:

- (a) an Australian carbon credit unit that:
 - (i) was issued in accordance with subsection 11(2) after the commencement of this definition; and
 - (ii) is, or is to be, identified as a Kyoto Australian carbon credit unit within the Registry; or
- (b) an Australian carbon credit unit that:

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- (i) was issued before the commencement of this definition;
and
- (ii) was a Kyoto Australian carbon credit unit (within the meaning of this Act as it stood before the commencement of this definition).

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 text of the Kyoto Protocol is set out in Australian Treaty Series 2008 No. 2 ([2008] ATS 2). 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).

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

landfill facility means a facility for the disposal of solid waste as landfill, and includes a facility that is closed for the acceptance of waste.

landfill legacy emissions avoidance project means a project to avoid emissions of greenhouse gases from the operation of a landfill facility, to the extent to which the emissions are attributable to waste accepted by the facility before the day specified in a legislative instrument made by the Minister for the purposes of this definition.

land rights land means land, where:

- (a) a freehold estate exists, or a lease is in force, over the land, where the grant of the freehold estate or lease took place under legislation that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (b) the land is vested in a person, where the vesting took place under legislation that makes provision for the vesting of land

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only in, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

- (c) neither paragraph (a) nor (b) applies, and the land is held expressly for the benefit of, or is held in trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (d) the land is reserved expressly for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (e) the land is specified in the regulations or the legislative rules.

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

lease, in relation to land rights land, includes:

- (a) a lease enforceable in equity; and
- (b) a contract that contains a statement to the effect that it is a lease; and
- (c) anything that, at or before the time of its creation, is, for any purpose, by a law of the Commonwealth, a State or a Territory, declared to be or described as a lease.

legislative rules means rules made under section 308.

methodology determination has the meaning given by section 106.

monitoring powers has the meaning given by section 199.

monitoring warrant means a warrant issued under section 211.

National Native Title Register has the same meaning as in the *Native Title Act 1993*.

native title has the same meaning as in the *Native Title Act 1993*.

native title holder has the same meaning as in the *Native Title Act 1993*.

native title land: an area of land is **native title land** if there is an entry on the National Native Title Register specifying that native title exists in relation to the area.

natural disturbance, in relation to an eligible offsets project, means any of the following events, where the event could not reasonably be prevented by the project proponent for the project:

- (a) flood;
- (b) bushfire;
- (c) drought;
- (d) pest attack;
- (e) disease;
- (f) an event specified in the regulations or the legislative rules.

net total number of Australian carbon credit units issued in relation to an eligible offsets project in accordance with Part 2 has the meaning given by section 42.

no double counting test has the meaning given by section 15A.

nominee account means a Registry account designated as a nominee account under subsection 140(6).

non-Kyoto Australian carbon credit unit means an Australian carbon credit unit other than a Kyoto Australian carbon credit unit.

officer has the same meaning as in the *Corporations Act 2001*.

offsets integrity standards has the meaning given by section 133.

offsets project means:

- (a) a sequestration offsets project; or
- (b) an emissions avoidance offsets project.

For this purpose, it is immaterial whether the project has been carried out.

offsets report means a report under section 76.

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

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

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permanence period, in relation to an eligible offsets project, has the meaning given by section 86A.

permitted carbon activity has the meaning given by paragraph 97(2)(b).

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.

person assisting an inspector has the meaning given by section 200.

premises includes the following:

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

prescribed means prescribed by the regulations or the legislative rules.

prescribed eligible carbon unit means a prescribed unit that is issued under a scheme relating to either or both of the following:

- (a) the removal of one or more greenhouse gases from the atmosphere;
- (b) the avoidance of emissions of one or more greenhouse gases.

It is immaterial whether a unit was issued in or outside Australia.

A unit must not be prescribed for the purposes of this definition unless the unit represents carbon abatement that is able to be used to meet Australia's climate change targets under:

- (c) the Kyoto Protocol; or
- (d) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.

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

project includes a set of activities.

project area, in relation an area-based offsets project, means an area of land on which the project has been, is being, or is to be, carried out.

project proponent, in relation to an offsets project, means the person who:

- (a) is responsible for carrying out the project; and
- (b) has the legal right to carry out the project.

Note 1: See also section 46 (registered native title bodies corporate).

Note 2: See also section 135 (multiple project proponents).

protected audit information means protected information that was obtained by a person in the person's capacity as:

- (a) an audit team leader; or
- (b) a person assisting an audit team leader.

protected ERAC information means protected information that was obtained by a person in the person's capacity as:

- (a) an Emissions Reduction Assurance Committee member; or
- (b) a person assisting the Emissions Reduction Assurance Committee under section 269.

protected information means information that:

- (a) was obtained after the commencement of this section by a person in the person's capacity as an entrusted public official; and
- (b) relates to the affairs of a person other than an entrusted public official.

quarter means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October.

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regional natural resource management plan means a plan prepared by a regional natural resource management organisation.

registered greenhouse and energy auditor has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

registered holder, in relation to an Australian carbon credit unit, means the person in whose Registry account there is an entry for the unit.

registered indigenous land use agreement means an indigenous land use agreement the details of which are entered on the Register of Indigenous Land Use Agreements.

registered native title body corporate has the same meaning as in the *Native Title Act 1993*.

Register of Indigenous Land Use Agreements has the same meaning as in the *Native Title Act 1993*.

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.

regulatory approval, in relation to an offsets project, means an approval, licence or permit (however described) that:

- (a) relates to, or to an element of, the project; and
- (b) is required under a law of the Commonwealth, a State or Territory that relates to:
 - (i) land use or development; or
 - (ii) the environment; or
 - (iii) water.

relevant carbon pool, in relation to a sequestration offsets project:

- (a) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular living biomass—means the biomass; or
- (b) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular dead organic matter—means the dead organic matter; or
- (c) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular soil—means the soil.

relevant land registration official:

- (a) in relation to an area-based offsets project that is or was an eligible offsets project—means the Registrar of Titles or other proper officer of the State or Territory in which the project area, or any of the project areas, is situated; or
- (b) in relation to an area of land that is or was subject to a carbon maintenance obligation—means the Registrar of Titles or other proper officer of the State or Territory in which the area of land is situated.

relinquish, in relation to an Australian carbon credit unit, means relinquish under section 175.

reporting period for an eligible offsets project means a period that is expressed, in an offsets report about the project, to be a reporting period for the project.

Note: See section 76.

reviewable decision has the meaning given by section 240.

Royal Commission has the same meaning as in the *Royal Commissions Act 1902*.

scheme, when used in Part 22, means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or

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- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

Secretary means the Secretary of the Department.

sequestration offsets project has the meaning given by section 54.

special native title account means a Registry account designated as a special native title account under subsection 48(6).

statutory authority of the Commonwealth, a State or a Territory, means an authority or body (including a corporation sole) established by or under a law of the Commonwealth, the State or the Territory (other than a general law allowing incorporation as a company or body corporate), but does not include:

- (a) an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
- (b) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or
- (c) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (d) an authority or body that is:
 - (i) established by or under a law of the Commonwealth, a State or a Territory; and
 - (ii) specified in the regulations or the legislative rules.

Torrens system land: land is **Torrens system land** if the title to the land is registered under a Torrens system of registration.

Torres Strait Islander has the same meaning as in the *Native Title Act 1993*.

transfer, in relation to an Australian carbon credit unit, has the meaning given by section 151.

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*.

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 Convention is in Australian Treaty Series 1994 No. 31 ([1994] ATS 31) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

vacancy, in relation to the office of an Emissions Reduction Assurance Committee member, has a meaning affected by section 6.

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

6 Vacancy in the office of an Emissions Reduction Assurance Committee member

For the purposes of a reference in:

- (a) this Act to a **vacancy** in the office of an Emissions Reduction Assurance Committee member; or
- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;

there are taken to be 4 offices of member of the Emissions Reduction Assurance Committee in addition to the Chair of the Emissions Reduction Assurance Committee.

7 Electronic notice transmitted to the Regulator

- (1) For the purposes of this Act, a notice is an **electronic notice transmitted to the Regulator** if, and only if:
 - (a) the notice is transmitted to the Regulator by means of an electronic communication; and

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- (b) if the Regulator requires that the notice be transmitted, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the Regulator’s requirement has been met; and
 - (c) the notice complies with regulations or legislative rules made for the purposes of subsection (2).
- (2) The regulations or legislative rules may make provision for or in relation to the security and authenticity of notices transmitted to the Regulator by means of an electronic communication.
- (3) Regulations or legislative rules made for the purposes of subsection (2) may deal with:
 - (a) encryption; and
 - (b) authentication of identity.
- (4) Subsection (3) does not limit subsection (2).
- (5) For the purposes of this Act, if a notice is transmitted to the Regulator by means of an electronic communication, the notice is taken to have been transmitted on the day on which the electronic communication is dispatched.
- (6) Subsection (5) of this section has effect despite section 14A of the *Electronic Transactions Act 1999*.
- (7) This section does not, by implication, limit the regulations that may be made under the *Electronic Transactions Act 1999*.

7A Extended accounting period

- (1) For the purposes of this Act, if an eligible offsets project is an emissions avoidance offsets project of a kind specified in the legislative rules, the ***extended accounting period*** for the project is the period:
 - (a) beginning immediately after the end of the crediting period, or the last of the crediting periods, for the project; and

- (b) ending at a time ascertained in accordance with the legislative rules.
- (2) Subsection (1) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

8 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (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.
- (4) The protection in subsection (2) does not apply to a penalty under section 179 or 180.

9 Extension to external Territories

This Act extends to every external Territory.

9A 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) For the purposes of subsection (1), a reference in paragraph 27(4)(a) to Australia is to be read as if it included a reference to the exclusive economic zone and the continental shelf.

9B 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

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(c) waters of the continental shelf;
in accordance with the United Nations Convention on the Law of
the Sea.

Part 2—Issue of Australian carbon credit units in respect of offsets projects

Division 1—Introduction

10 Simplified outline

The following is a simplified outline of this Part:

- Australian carbon credit units may be issued in relation to an eligible offsets project.
- The number of Australian carbon credit units issued will be worked out by reference to the relevant abatement amount calculated under the applicable methodology determination.
- For sequestration offsets projects, a risk of reversal buffer and permanence period discount apply.

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Division 2—Issue of Australian carbon credit units in respect of offsets projects

11 Issue of Australian carbon credit units in respect of offsets projects

Scope

- (1) This section applies if a certificate of entitlement is in force in respect of an eligible offsets project for a reporting period.

Note: For *certificate of entitlement*, see section 15.

Issue of units

- (2) If the project has resulted in eligible carbon abatement, the Regulator must, as soon as practicable after the day on which the certificate was issued, issue to the holder of the certificate a number of Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.
- (3) If the project has not resulted in eligible carbon abatement, the Regulator must, as soon as practicable after the day on which the certificate was issued, issue to the holder of the certificate a number of non-Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.
- (5) The Regulator must not issue an Australian carbon credit unit to a person in accordance with subsection (2) or (3) unless the person has a Registry account.

Note 1: See also section 49 (issue of Australian carbon credit units to registered native title bodies corporate).

Note 2: See also section 141 (issue of Australian carbon credit units in relation to projects with multiple project proponents).

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- (6) The Regulator must issue an Australian carbon credit unit to a person in accordance with subsection (2) or (3) by making an entry for the unit in the person's Registry account the account number of which is specified in the certificate.

Note 1: See also section 49 (issue of Australian carbon credit units to registered native title bodies corporate).

Note 2: See also section 141 (issue of Australian carbon credit units in relation to projects with multiple project proponents).

Division 3—Certificate of entitlement

12 Application for certificate of entitlement

After the end of a reporting period for an eligible offsets project, a person may apply to the Regulator for the issue to the person of a certificate of entitlement in respect of the project for the reporting period.

Note 1: For *eligible offsets project*, see section 27.

Note 2: For *reporting period*, see section 5.

13 Form of application

- (1) An application must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) set out the account number of a Registry account of the applicant that should be specified in the certificate; and
 - (d) be accompanied by such information as is specified in the regulations or the legislative rules; and
 - (e) if, under the legislative rules, the application is subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the legislative rules; and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (ea) if:
 - (i) under the legislative rules, a set of 2 or more applications made by the applicant is subject to audit under this Act; and
 - (ii) the application is included in that set; be accompanied by an audit report that is:
 - (iii) prescribed by the legislative rules; and

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- (iv) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (eb) if, before the application was given to the Regulator, the Regulator gave the applicant a written notice stating that the application would be subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the legislative rules; and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
- (ec) if a notice under section 77A is relevant to the application—be accompanied by a copy of that notice; and
- (f) be accompanied by the offsets report about the project for the relevant reporting period; and
- (g) be accompanied by such other documents (if any) as are specified in the regulations or the legislative rules; and
- (h) be accompanied by the fee (if any) specified in the regulations or the legislative rules.

Note 1: See also section 49 (applications for certificates of entitlement by registered native title bodies corporate).

Note 2: See also section 141 (applications for certificates of entitlement in relation to projects with multiple project proponents).

- (2) The Regulator must not give a notice under paragraph (1)(eb) unless the Regulator is satisfied that it is appropriate to do so, having regard to effective risk management.
- (4) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (5) A fee specified under paragraph (1)(h) must not be such as to amount to taxation.

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14 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.

15 Issue of certificate of entitlement

Scope

- (1) This section applies if an application under section 12 has been made for the issue of a certificate of entitlement in respect of an eligible offsets project for a reporting period.

Issue of certificate

- (2) If the Regulator is satisfied that:
 - (a) the applicant passes the fit and proper person test; and
 - (b) the applicant was, immediately before the end of the period:
 - (i) the project proponent for the project; and
 - (ii) identified in the relevant section 27 declaration as the project proponent for the project; and
 - (c) if the project does not have an extended accounting period—the reporting period is included in a crediting period for the project; and
 - (ca) if the project has an extended accounting period—the reporting period is included in:
 - (i) a crediting period for the project; or
 - (ii) the extended accounting period; and
 - (d) the application passes the no double counting test; and

- (e) if the relevant section 27 declaration is subject to the condition that all regulatory approvals must be obtained for the project before the end of the first reporting period for the project—that condition has been met; and
 - (ea) if the relevant section 27 declaration is subject to a condition mentioned in subsection 28A(2)—that condition has been met; and
 - (f) the applicant is not subject to a requirement under Part 7 to relinquish a number of Australian carbon credit units; and
 - (g) no amount is payable by the applicant under:
 - (i) section 179; or
 - (ii) section 180;in relation to a requirement under Part 7 to relinquish a number of Australian carbon credit units; and
 - (h) if the regulations or the legislative rules specify one or more other eligibility requirements—those requirements are met;
- the Regulator must issue a certificate of entitlement in respect of the project for the period.

Note 1: For the fit and proper person test, see section 60.

Note 2: For the no double counting test, see section 15A.

- (3) A certificate of entitlement must state that a specified number is the unit entitlement in respect of the certificate.

Note: For unit entitlement, see section 16 or 18.

- (4) If the application sets out the account number of a Registry account of the applicant that should be specified in the certificate of entitlement, the certificate must specify that account number.

Timing

- (5) 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 14(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or

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

Refusal

- (6) If the Regulator decides to refuse to issue a certificate of entitlement, the Regulator must give written notice of the decision to the applicant.

15A No double counting test

For the purposes of this Act, an application under section 12 passes the ***no double counting test*** if, assuming that a certificate of entitlement were to be issued in respect of the relevant eligible offsets project as a result of the application, none of the carbon abatement that would be reflected in the unit entitlement for the certificate has been reflected in:

- (a) the unit entitlement for another certificate of entitlement issued in respect of the project; or
- (b) the unit entitlement for a certificate of entitlement issued in respect of another eligible offsets project.

Note: For unit entitlement, see section 16 or 18.

16 Unit entitlement—sequestration offsets projects

Scope

- (1) This section applies to an eligible offsets project if the project is a sequestration offsets project.

Note: For ***sequestration offsets project***, see section 5.

Unit entitlement

- (2) The number to be specified in a certificate of entitlement in respect of the project for a reporting period as the unit entitlement in respect of the certificate is the number worked out using the formula:

$$\text{Net abatement number} - \text{Risk of reversal buffer number} - \text{Permanence period discount number}$$

where:

net abatement number means the total number of tonnes in the amount that, under the applicable methodology determination for the reporting period, is the carbon dioxide equivalent net abatement amount for the project in relation to the reporting period.

permanence period discount number means:

- (a) if the project is a 100-year permanence period project—zero; or
- (b) if the project is a 25-year permanence period project and paragraph (c) does not apply—20% of the net abatement number; or
- (c) if:
 - (i) the project is a 25-year permanence period project; and
 - (ii) at the start of the crediting period in which the reporting period is included, another percentage is specified in the legislative rules in relation to a particular kind of project; and
 - (iii) the project is of that kind;that other percentage of the net abatement number.

risk of reversal buffer number means:

- (a) 5%; or
 - (b) if:
 - (i) at the start of the crediting period in which the reporting period is included, another percentage is specified in the legislative rules in relation to a particular kind of project; and
 - (ii) the project is of that kind;that other percentage;
- of the net abatement number.

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Rounding down

- (3) If the number worked out using the formula in subsection (2) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded down).
- (4) For the purposes of subsection (3), zero is taken to be a whole number.

18 Unit entitlement—emissions avoidance offsets project

Scope

- (1) This section applies to an eligible offsets project if the project is an emissions avoidance offsets project.

Note: For *emissions avoidance offsets project*, see section 53.

Unit entitlement

- (2) The number to be specified in a certificate of entitlement in respect of the project for a reporting period as the unit entitlement in respect of the certificate is the total number of tonnes in the amount that, under the applicable methodology determination for the reporting period, is the carbon dioxide equivalent net abatement amount for the project in relation to the reporting period.

20 Certificate of entitlement not transferable

A certificate of entitlement is not transferable.

Part 2A—Purchase of eligible carbon credit units by the Commonwealth

Division 1—Introduction

20A Simplified outline of this Part

- The Regulator may, on behalf of the Commonwealth, enter into contracts for the purchase by the Commonwealth of eligible carbon credit units.
- Such a contract is to be known as a carbon abatement contract.
- The Regulator may enter into a carbon abatement contract as the result of a carbon abatement purchasing process.
- The Regulator may conduct carbon abatement purchasing processes on behalf of the Commonwealth. Such processes may include reverse auctions and tender processes.
- The Regulator must have regard to certain principles and other matters when conducting a carbon abatement purchasing process.

Division 2—Carbon abatement contracts

20B Carbon abatement contracts

- (1) The functions of the Regulator include entering into contracts, on behalf of the Commonwealth, for the purchase by the Commonwealth of eligible carbon credit units.
- (2) It is immaterial whether the units are in existence when the contract is entered into.
- (3) For the purposes of this Act, a contract entered into under subsection (1) is to be known as a ***carbon abatement contract***.
- (4) For the purposes of this Act, if the Regulator enters into a carbon abatement contract with a person, the person is a ***carbon abatement contractor***.

20C When carbon abatement contracts may be entered into

- (1) The Regulator may enter into a carbon abatement contract under section 20B as the result of a carbon abatement purchasing process conducted by the Regulator under section 20G.
- (2) The Regulator must not enter into a carbon abatement contract under section 20B unless the carbon abatement contractor for the contract is a project proponent for an eligible offsets project.

Note: For declarations of eligible offsets projects, see section 27. The requirements for such a declaration include that the project proponent for the project passes the fit and proper person test.

20CA Duration of carbon abatement contracts

- (1) In setting the duration of a proposed carbon abatement contract, the Regulator must have regard to the following matters:
 - (a) such matters as are specified in the legislative rules;
 - (b) such other matters (if any) as the Regulator considers relevant.

- (2) In exercising the power to make legislative rules for the purposes of paragraph (1)(a), the Minister must have regard to the following matters:
- (a) the principle that, in general, the duration of a carbon abatement contract for the purchase of Australian carbon credit units should not be longer than 7 years;
 - (b) the principle that a longer duration of a carbon abatement contract for the purchase of Australian carbon credit units may be appropriate if the units are, or are to be, derived from an eligible offsets project that has a crediting period of more than 7 years;
 - (c) such other matters (if any) as the Minister considers relevant.

20D Regulator has powers etc. of the Commonwealth

- (1) The Regulator, on behalf of the Commonwealth, has all the rights, responsibilities, duties and powers of the Commonwealth in relation to the Commonwealth's capacity as a party to a carbon abatement contract.
- (2) Without limiting subsection (1):
- (a) an amount payable by the Commonwealth under a carbon abatement contract is to be paid by the Regulator on behalf of the Commonwealth; and
 - (b) an amount payable to the Commonwealth under a carbon abatement contract is to be paid to the Regulator on behalf of the Commonwealth; and
 - (c) the Regulator may institute an action or proceeding on behalf of the Commonwealth in relation to a matter that concerns a carbon abatement contract.

20E Conferral of powers on the Regulator

The Regulator may exercise a power conferred on the Regulator by a carbon abatement contract.

Division 3—Carbon abatement purchasing processes

20F Carbon abatement purchasing process

For the purposes of this Act, a *carbon abatement purchasing process* means any of the following processes:

- (a) a reverse auction;
- (b) a tender process;
- (c) any other process;

for the purchase by the Commonwealth of eligible carbon credit units. (It is immaterial whether the units are in existence when the process is conducted.)

20G Conduct of carbon abatement purchasing processes

- (1) The Regulator may, on behalf of the Commonwealth, conduct one or more carbon abatement purchasing processes.
- (2) In exercising the power conferred by subsection (1), the Regulator must have regard to:
 - (a) the principles set out in subsection (3); and
 - (b) such other matters (if any) as are specified in the legislative rules.

Principles for conduct of carbon abatement purchasing processes

- (3) The principles for conducting a carbon abatement purchasing process are that the process should:
 - (a) facilitate the Commonwealth purchasing carbon abatement at the least cost; and
 - (b) maximise the amount of carbon abatement that the Commonwealth can purchase; and
 - (c) be conducted in a manner that ensures that administrative costs are reasonable; and
 - (d) be conducted in a manner that ensures the integrity of the process; and

- (e) encourage competition; and
 - (f) provide for fair and ethical treatment of all participants in the process.
- (4) To avoid doubt, the mere fact that a person is a project proponent for an eligible offsets project does not automatically entitle the person to participate in a carbon abatement purchasing process.

Division 4—Miscellaneous

20H Legislative rules may provide for certain matters relating to purchased eligible carbon credit units etc.

- (1) The legislative rules may make provision for and in relation to any or all of the following matters in respect of eligible carbon credit units purchased by the Commonwealth under carbon abatement contracts:
- (a) transferring purchased units to a specified Commonwealth Registry account;
 - (b) prohibiting or restricting the transfer of units from such an account;
 - (c) cancelling units for which there are entries in such an account.

Note: For designation of Commonwealth Registry accounts, see section 12 of the *Australian National Registry of Emissions Units Act 2011*.

Restoration of units that were transferred by mistake

- (2) If:
- (a) one or more eligible carbon credit units were transferred from a Registry account kept by a person to a Commonwealth Registry account specified in legislative rules made for the purposes of paragraph (1)(a); and
 - (b) the units have been cancelled; and
 - (c) the Regulator is satisfied that the units were transferred by mistake;
- then:
- (d) the Regulator must, by written notice given to the person, determine that the units that were transferred are **restored units** for the purposes of this section; and
 - (e) a restored unit is taken never to have been cancelled; and
 - (f) the Regulator must make an entry for a restored unit in a Registry account kept by the person.

- (3) Subsection (2) does not affect the validity of the removal of the entry of a restored unit from the Commonwealth Registry account.
- (4) A determination made under paragraph (2)(d) is not a legislative instrument.

20J Certain instruments relating to Commonwealth procurement are not applicable

- (1) An instrument made under section 105B of the *Public Governance, Performance and Accountability Act 2013* does not apply in relation to the functions and powers of the Regulator under section 20B or 20G of this Act.

Note: Section 105B of the *Public Governance, Performance and Accountability Act 2013* provides for the making of instruments relating to procurement.

- (2) To avoid doubt, the Commonwealth Procurement Rules made under the *Financial Management and Accountability Regulations 1997* do not apply in relation to the functions and powers of the Regulator under section 20B or 20G of this Act.

20K Carbon abatement contracts are not instruments made under this Act

To avoid doubt, a carbon abatement contract is taken not to be an instrument made under this Act.

Part 3—Eligible offsets projects

Division 1—Introduction

21 Simplified outline

The following is a simplified outline of this Part:

- The Regulator may declare an offsets project to be an eligible offsets project.
- The Regulator may vary or revoke a declaration of an eligible offsets project.

Division 2—Declaration of eligible offsets project

22 Application for declaration of eligible offsets project

A person may apply to the Regulator for the declaration of an offsets project as an eligible offsets project.

Note: The Regulator has a function of providing advice and assistance in relation to the making of applications: see section 286.

23 Form of application

- (1) An application must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the regulations or the legislative rules; and
 - (d) if the project is of a kind specified in the regulations or the legislative rules—be accompanied by a prescribed audit report prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (f) if an indigenous land use agreement is relevant to the Regulator's decision on the application—be accompanied by a copy of the agreement; and
 - (g) if the project is a sequestration offsets project—include either:
 - (i) a request that the project be treated as a 100-year permanence period project; or
 - (ii) a request that the project be treated as a 25-year permanence period project; and
 - (ga) if:
 - (i) the project is an area-based offsets project; and
 - (ii) the project area, or any of the project areas, for the project is covered by a regional natural resource management plan;

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be accompanied by a statement about whether the project is consistent with the plan; and

- (h) be accompanied by such other documents (if any) as are specified in the regulations or the legislative rules; and
- (i) be accompanied by the fee (if any) specified in the regulations or the legislative rules.

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

- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (3) A fee specified under paragraph (1)(i) must not be such as to amount to taxation.
- (5) Paragraph (1)(d) of this section does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to:
 - (a) another paragraph of subsection (1) of this section; or
 - (b) another instrument under this Act.

24 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.

25 Withdrawal of application

- (1) An applicant may withdraw the application at any time before the Regulator makes a decision on the application.

- (2) This Act does not prevent the applicant from making a fresh application.
- (3) If:
 - (a) the applicant withdraws the application; and
 - (b) the applicant has paid a fee in relation to the application; the Regulator must, on behalf of the Commonwealth, refund the application fee.

26 Application may be split

Scope

- (1) This section applies if:
 - (a) an application under section 22 has been made, or purportedly made, for a declaration of an offsets project as an eligible offsets project; and
 - (b) the Regulator is satisfied that the application relates to 2 or more offsets projects.

Application may be split

- (2) The Regulator may, by written notice given to the applicant, determine that this Act has effect as if the applicant had made a separate application under section 22 in relation to each of the offsets projects referred to in paragraph (1)(b) of this section.

27 Declaration of eligible offsets project

Scope

- (1) This section applies if an application under section 22 has been made for a declaration of an offsets project as an eligible offsets project.

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Declaration

- (2) After considering the application, the Regulator may, by writing, declare that the offsets project is an ***eligible offsets project*** for the purposes of this Act.
- (3) A declaration under subsection (2) must:
- (a) identify the name of the project; and
 - (b) if the project is an area-based offsets project—identify, in accordance with the regulations or the legislative rules, the project area or project areas; and
 - (c) identify the project proponent for the project; and
 - (ca) identify the applicable methodology determination for the project; and
 - (cb) identify the crediting period or periods for the project; and
 - (d) identify such attributes of the project as are specified in the regulations or the legislative rules; and
 - (e) if:
 - (i) the project is a sequestration offsets project; and
 - (ii) the application included a request that the project be treated as a 100-year permanence period project;declare that the project is a ***100-year permanence period project***; and
 - (f) if:
 - (i) the project is a sequestration offsets project; and
 - (ii) the application included a request that the project be treated as a 25-year permanence period project;declare that the project is a ***25-year permanence period project***.

Criteria for declaration

- (4) The Regulator must not declare that the offsets project is an eligible offsets project unless the Regulator is satisfied that:
- (a) the project is, or is to be, carried on in Australia; and
 - (b) the project is covered by a methodology determination; and

- (c) the project meets such requirements as are set out in the methodology determination in accordance with paragraph 106(1)(b); and
- (d) the project meets the additionality requirements set out in subsection (4A) of this section; and
- (e) the applicant is the project proponent for the project; and
- (f) the applicant passes the fit and proper person test; and
- (g) if the project is a sequestration offsets project—the project area, or each project area, meets the requirements set out in subsection (5) of this section; and
- (l) the project meets the eligibility requirements (if any) specified in the regulations or the legislative rules; and
- (m) the project is not an excluded offsets project.

Note 1: Methodology determinations are made under section 106.

Note 2: For the fit and proper person test, see section 60.

Note 3: For *excluded offsets project*, see section 56.

(4A) The additionality requirements mentioned in paragraph (4)(d) are:

- (a) either:
 - (i) the requirement (the ***newness requirement***) that the project has not begun to be implemented; or
 - (ii) if the methodology determination that covers the project specifies, for the purposes of this subparagraph, one or more requirements that are expressed to be in lieu of the newness requirement—those requirements; and
- (b) either:
 - (i) the requirement (the ***regulatory additionality requirement***) that the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory; or
 - (ii) if the methodology determination that covers the project specifies, for the purposes of this subparagraph, one or more requirements that are expressed to be in lieu of the regulatory additionality requirement—those requirements; and

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- (c) either:
 - (i) the requirement (the ***government program requirement***) that the project would be unlikely to be carried out under another Commonwealth, State or Territory government program or scheme in the absence of a declaration of the project as an eligible offsets project; or
 - (ii) if the legislative rules specify, for the purposes of this subparagraph, one or more requirements that are expressed to be in lieu of the government program requirement—those requirements.
- (4B) For the purposes of subparagraph (4A)(a)(i), in determining whether the project has begun to be implemented, disregard any of the following activities that have been, or are being, undertaken in relation to the project:
 - (a) conducting a feasibility study for the project;
 - (b) planning or designing the project;
 - (c) obtaining regulatory approvals for the project;
 - (d) obtaining consents relating to the project;
 - (e) obtaining advice relating to the project;
 - (f) conducting negotiations relating to the project;
 - (g) sampling to establish a baseline for the project;
 - (h) an activity specified in the legislative rules;
 - (i) an activity that is ancillary or incidental to any of the above activities.
- (4C) For the purposes of subparagraph (4A)(a)(i), the following are examples of when a project has begun to be implemented:
 - (a) making a final investment decision in relation to the project;
 - (b) acquiring or leasing a tangible asset (other than land) that is for use wholly or mainly for the purposes of the project;
 - (c) commencing construction work for the purposes of the project;
 - (d) in the case of a sequestration offsets project—preparing soil for seeding or planting that is for the purposes of the project;

- (e) in the case of a sequestration offsets project—seeding, planting or fertilising plants that are for the purposes of the project;
 - (f) in the case of a sequestration offsets project—installing an irrigation or drainage system for the purposes of the project.
- (4D) For the purposes of paragraph (4C)(a), **final investment decision** has the meaning generally accepted within the corporate finance community.
- (4E) For the purposes of paragraph (4C)(b), disregard an asset that is a minor asset.
- (5) The requirements mentioned in paragraph (4)(g) are:
- (a) the project area is Torrens system land or Crown land; and
 - (b) the project area is not specified in the regulations or the legislative rules.
- Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.
- (10) The Regulator must not make a declaration under subsection (2) if:
- (a) the project is an area-based offsets project; and
 - (b) the project area is, or any of the project areas are, to any extent subject to a carbon maintenance obligation.
- (11) The Regulator must not make a declaration under subsection (2) in relation to a project (the **new project**) if:
- (a) a notice was given under section 88, 89, 90 or 91 in relation to a project (the **prior project**) that is or was:
 - (i) an eligible offsets project; and
 - (ii) a sequestration offsets project; and
 - (aa) the new project is an area-based offsets project; and
 - (b) the project area, or any of the project areas, for the new project was or were identified in the relevant section 27 declaration as the project area or project areas for the prior project; and
 - (c) the notice required a person to relinquish a particular number of Australian carbon credit units; and

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- (d) the person did not comply with the requirement within 90 days after the notice was given; and
- (e) the penalty payable under section 179 in respect of the non-compliance with the requirement (including any late payment penalty payable under section 180 in relation to the section 179 penalty) has not been paid in full.

Timing

- (14) 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 24(1) in relation to the application—within 90 days after the applicant gave the Regulator the information; or
 - (c) otherwise—within 90 days after the application was made.

When a declaration takes effect

- (15) A declaration under subsection (2) takes effect when it is made.

Notification of declaration

- (17) As soon as practicable after making a declaration under subsection (2), the Regulator must give a copy of the declaration to:
 - (a) the applicant; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Refusal

- (18) If the Regulator decides to refuse to declare the offsets project as an eligible offsets project, the Regulator must give written notice of the decision to the applicant.

Declaration is not legislative instrument

- (20) A declaration made under subsection (2) is not a legislative instrument.

27A Suspension of processing of applications for declarations of eligible offsets projects

Order

- (1) The Emissions Reduction Assurance Committee may, by legislative instrument, order that, if:
- (a) an application is made under section 22 during a specified period; and
 - (b) the application relates to an offsets project that is covered by a specified methodology determination;
- the Regulator must not:
- (c) consider the application during that period; or
 - (d) make a decision on the application during that period.
- (2) A period specified in an order under subsection (1):
- (a) must start at the commencement of the order; and
 - (b) must not be longer than 12 months.
- (3) The Emissions Reduction Assurance Committee must not make an order under subsection (1) that relates to a methodology determination unless the Committee is satisfied that there is reasonable evidence that the methodology determination does not comply with one or more of the offsets integrity standards.
- (4) Before making an order under subsection (1), the Emissions Reduction Assurance Committee must inform the Minister of the Committee's proposal to make the order.

Compliance with order

- (5) The Regulator must comply with an order under subsection (1).

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Timing of decision on application

- (6) If an application made under section 22 is or was covered by an order under subsection (1) of this section, subsection 27(14) does not apply to the application.

Note: Subsection 27(14) deals with the timing of decisions on applications.

28 Declaration may be subject to condition about obtaining regulatory approvals

Scope

- (1) This section applies if:
- (a) an application under section 22 has been made for a declaration of an offsets project as an eligible offsets project; and
 - (b) the Regulator makes a declaration under section 27 in relation to the project; and
 - (c) the Regulator is not satisfied that all regulatory approvals have been obtained for the project.

Condition

- (2) The Regulator must specify in the declaration that the declaration is subject to the condition that all regulatory approvals must be obtained for the project before the end of the first reporting period for the project.

28A Declaration may be subject to condition about obtaining consents from eligible interest holders

Scope

- (1) This section applies if:
- (a) an application under section 22 has been made for a declaration of an offsets project as an eligible offsets project; and

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- (b) the Regulator makes a declaration under section 27 in relation to the project; and
- (c) the Regulator is satisfied that there are one or more persons (the ***relevant interest-holders***) who:
 - (i) hold an eligible interest in the project area, or any of the project areas, for the project; and
 - (ii) have not consented, in writing, to the making of the application.

Condition

- (2) The Regulator must specify in the declaration that the declaration is subject to the condition that the written consent of each relevant interest-holder to the existence of the declaration must be obtained before the end of the first reporting period for the project.

Consents

- (3) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2) must be in a form approved, in writing, by the Regulator.
- (4) A consent mentioned in subparagraph (1)(c)(ii) or subsection (2) may be set out in a registered indigenous land use agreement.
- (5) Subsection (3) does not apply to a consent mentioned in subparagraph (1)(c)(ii) or subsection (2) if the consent is set out in a registered indigenous land use agreement.

Registered indigenous land use agreements

- (6) If:
 - (a) the declaration is in force; and
 - (b) a consent mentioned in subparagraph (1)(c)(ii) or subsection (2) of this section was set out in a registered indigenous land use agreement;details of the agreement must not be removed from the Register of Indigenous Land Use Agreements under subparagraph 199C(1)(c)(ii) of the *Native Title Act 1993* without the written consent of the Regulator.

Division 3—Variation of declaration of eligible offsets project

29 Voluntary variation of declaration of eligible offsets project in relation to the project area or project areas

Regulations or legislative rules

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to vary a declaration under section 27 in relation to an area-based offsets project so far as the declaration identifies the project area or project areas.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to vary a declaration unless the project proponent for the project applies to the Regulator for the variation of the declaration.
- (3) Regulations or legislative rules made for the purposes of subsection (1) may make provision for or in relation to any or all of the following matters:
 - (a) applications for variations under those regulations or legislative rules, as the case may be;
 - (b) the approval by the Regulator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) consents that must be obtained for the making of such an application;
 - (g) authorising a person to issue a certificate in relation to such an application;
 - (i) the fee (if any) that must accompany such an application;
 - (j) the withdrawal of such an application;
 - (k) empowering the Regulator:

- (i) to require an applicant to give the Regulator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (4) Subsection (3) does not limit subsection (1).
- (5) A fee mentioned in paragraph (3)(i) must not be such as to amount to taxation.
- (6) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the variation to:
 - (a) the applicant for the variation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.
- (7) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if the Regulator decides to refuse to vary a declaration of an eligible offsets project in accordance with an application for variation under those regulations or legislative rules, as the case may be, the Regulator must give written notice of the decision to the applicant for the variation.

Registered indigenous land use agreements

- (8) If:
 - (a) a declaration of an eligible offsets project is varied in accordance with regulations or legislative rules made for the purposes of subsection (1); and
 - (b) a consent to the making of the application for the variation was set out in a registered indigenous land use agreement;details of the agreement must not be removed from the Register of Indigenous Land Use Agreements under subparagraph 199C(1)(c)(ii) of the *Native Title Act 1993* without the written consent of the Regulator.

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References to eligible offsets project

- (9) If a declaration of an eligible offsets project is varied in accordance with regulations or legislative rules made for the purposes of subsection (1), a reference in this Act, the regulations or the legislative rules to the eligible offsets project is a reference to the eligible offsets project as varied.

30 Voluntary variation of declaration of eligible offsets project in relation to the project proponent

Regulations or legislative rules

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to vary a declaration under section 27 in relation to an offsets project so far as the declaration identifies the project proponent for the project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to vary a declaration unless the project proponent for the project applies to the Regulator for the variation of the declaration.
- (3) Regulations or legislative rules made for the purposes of subsection (1) may make provision for or in relation to any or all of the following matters:
- (a) applications for variations under those regulations or legislative rules, as the case may be;
 - (b) the approval by the Regulator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) the fee (if any) that must accompany such an application;
 - (g) the withdrawal of such an application;
 - (h) empowering the Regulator:

- (i) to require an applicant to give the Regulator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application;
- (i) empowering the Regulator to require the applicant to give security to the Commonwealth in relation to the fulfilment by the applicant of any requirements to relinquish Australian carbon credit units that may be imposed on the applicant under this Part in relation to the project.
- (4) Subsection (3) does not limit subsection (1).
- (5) A fee mentioned in paragraph (3)(f) must not be such as to amount to taxation.
- (6) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the variation to:
 - (a) the applicant for the variation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.
- (7) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations or legislative rules, as the case may be, the variation takes effect:
 - (a) when it is made; or
 - (b) if:
 - (i) the Regulator makes a written determination specifying an earlier day; and
 - (ii) the applicant for the variation has consented to the determination of the earlier day;on the day so determined.

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- (8) A determination made under subparagraph (7)(b)(i) is not a legislative instrument.
- (9) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if the Regulator decides to refuse to vary a declaration of an eligible offsets project in accordance with an application for variation under those regulations or legislative rules, as the case may be, the Regulator must give written notice of the decision to the applicant for the variation.

References to eligible offsets project

- (10) If a declaration of an eligible offsets project is varied in accordance with regulations or legislative rules made for the purposes of subsection (1), a reference in this Act, the regulations or the legislative rules to the eligible offsets project is a reference to the eligible offsets project as varied.

31 Voluntary variation of conditional declaration of eligible offsets project—condition of declaration has been met

Scope

- (1) This section applies to a declaration under section 27 in relation to an offsets project if the declaration is subject to a condition mentioned in subsection 28(2) or 28A(2).

Regulations or legislative rules

- (2) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to vary such a declaration by removing such a condition.
- (3) Regulations or legislative rules made for the purposes of subsection (2) must not empower the Regulator to vary a declaration unless:
 - (a) the project proponent for the project applies to the Regulator for the variation of the declaration; and
 - (b) the Regulator is satisfied that the condition has been met.

- (4) Regulations or legislative rules made for the purposes of subsection (2) may make provision for or in relation to any or all of the following matters:
 - (a) applications for variations under those regulations or legislative rules, as the case may be;
 - (b) the approval by the Regulator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) the fee (if any) that must accompany such an application;
 - (g) the withdrawal of such an application;
 - (h) empowering the Regulator:
 - (i) to require an applicant to give the Regulator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (5) Subsection (4) does not limit subsection (2).
- (6) A fee mentioned in paragraph (4)(f) must not be such as to amount to taxation.
- (7) Regulations or legislative rules made for the purposes of subsection (2) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the variation to:
 - (a) the applicant for the variation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.
- (8) Regulations or legislative rules made for the purposes of subsection (2) must provide that, if the Regulator decides to refuse to vary a declaration of an eligible offsets project in accordance

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with an application for variation under those regulations or legislative rules, as the case may be, the Regulator must give written notice of the decision to the applicant for the variation.

References to eligible offsets project

- (9) If a declaration of an eligible offsets project is varied in accordance with regulations or legislative rules made for the purposes of subsection (2), a reference in this Act, the regulations or the legislative rules to the eligible offsets project is a reference to the eligible offsets project as varied.

31A No variation of declaration of eligible offsets project as a 100-year or 25-year permanence period project

Scope

- (1) This section applies to a declaration under section 27 in relation to an offsets project if the declaration:
- (a) declares that the project is a 100-year permanence period project; or
 - (b) declares that the project is a 25-year permanence period project.

Regulator must not vary permanence period

- (2) The Regulator must not:
- (a) if paragraph (1)(a) applies—vary the declaration to declare that the project is a 25-year permanence period project; or
 - (b) if paragraph (1)(b) applies—vary the declaration to declare that the project is a 100-year permanence period project.

Division 4—Revocation of declaration of eligible offsets project

Subdivision A—Voluntary revocation of declaration of eligible offsets project

32 Voluntary revocation of declaration of eligible offsets project—units issued

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:
 - (a) one or more Australian carbon credit units have been issued in relation to the project in accordance with Part 2; and
 - (b) the project proponent for the project applies to the Regulator for the revocation of the declaration; and
 - (c) if the project is a sequestration offsets project:
 - (i) before the application was made, the applicant voluntarily relinquished a number of Australian carbon credit units in order to satisfy a condition for the revocation of the declaration; and
 - (ii) the number of relinquished units equals the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (3) Regulations or legislative rules made for the purposes of subsection (1) may make provision for or in relation to either or both of the following matters:
 - (a) applications for revocations under those regulations or legislative rules, as the case may be;
 - (b) the approval by the Regulator of a form for such an application.

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- (4) Subsection (3) does not limit subsection (1).
- (5) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the revocation to:
 - (a) the applicant for the revocation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

33 Voluntary revocation of declaration of eligible offsets project—no units issued

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:
 - (a) no Australian carbon credit units have been issued in relation to the project in accordance with Part 2; and
 - (b) the project proponent for the project applies to the Regulator for the revocation of the declaration.
- (3) Regulations or legislative rules made for the purposes of subsection (1) may make provision for or in relation to either or both of the following matters:
 - (a) applications for revocations under those regulations or legislative rules, as the case may be;
 - (b) the approval by the Regulator of a form for such an application.
- (4) Subsection (3) does not limit subsection (1).
- (5) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or

legislative rules, as the case may be, the Regulator must give a copy of the revocation to:

- (a) the applicant for the revocation; and
- (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Subdivision B—Unilateral revocation of declaration of eligible offsets project

34 Unilateral revocation of declaration of eligible offsets project—condition of declaration has not been met

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:
 - (a) the declaration is subject to a condition mentioned in subsection 28(2) or 28A(2); and
 - (b) the Regulator is satisfied that the condition has not been met.
- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

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**35 Unilateral revocation of declaration of eligible offsets project—
eligibility requirements not met etc.**

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless the Regulator is satisfied that the project does not meet a requirement that is:
 - (a) set out in subsection 27(4); and
 - (b) specified in regulations or legislative rules made for the purposes of this paragraph.
- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

**36 Unilateral revocation of declaration of eligible offsets project—
project proponent ceases to pass the fit and proper person
test**

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:

- (a) the project proponent for the project ceases to pass the fit and proper person test; and
- (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project does not pass the fit and proper person test.

Note: For the fit and proper person test, see section 60.

- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

**37 Unilateral revocation of declaration of eligible offsets project—
person responsible for carrying out project ceases to be
the project proponent**

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:
 - (a) the person who is responsible for carrying out the project ceases to be the project proponent for the project; and
 - (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is responsible for carrying out the project is not:
 - (i) the project proponent for the project; and

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- (ii) a person who passes the fit and proper person test.

Note: For the fit and proper person test, see section 60.

- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the revocation to:
 - (a) the person who is responsible for carrying out the project; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

38 Unilateral revocation of declaration of eligible offsets project—false or misleading information

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:
 - (a) information was given by a person to the Regulator in connection with the project; and
 - (b) the information was:
 - (i) contained in an application under this Act, the regulations or the legislative rules; or
 - (ii) given in connection with an application under this Act, the regulations or the legislative rules; or
 - (iii) contained in an offsets report; or
 - (iv) contained in a notification under Part 6; and

- (c) the information was false or misleading in a material particular.
- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations or legislative rules made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations or legislative rules, as the case may be, the Regulator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Division 5—Entries in title registers

39 Entries in title registers—general

Scope

- (1) This section applies to an eligible offsets project.

Entries

- (2) The relevant land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for the purposes of drawing the attention of persons to:
- (a) the existence of the eligible offsets project; and
 - (b) the fact that requirements may arise under this Act in relation to the project; and
 - (c) such other matters (if any) relating to this Act as the official considers appropriate.

40 Entries in title registers—land subject to carbon maintenance obligation

Scope

- (1) This section applies to one or more areas of land if those areas of land are subject to a carbon maintenance obligation.

Entries

- (2) The relevant land registration official may make such entries or notations in or on registers or other documents kept by the official (in electronic form or otherwise) as the official thinks appropriate for the purposes of drawing the attention of persons to the obligation.

**Division 7—Net total number of Australian carbon credit
units issued in relation to an eligible offsets
project**

**42 Net total number of Australian carbon credit units issued in
relation to an eligible offsets project**

For the purposes of this Act, the *net total number* of Australian carbon credit units issued in relation to an eligible offsets project in accordance with Part 2 is the number worked out using the following formula:

$$\begin{array}{rcl} \text{Total number of} & & \text{Total number of} \\ \text{Australian carbon credit units} & & \text{Australian carbon credit units} \\ \text{issued in relation to the project} & - & \text{relinquished in order to comply} \\ \text{in accordance with Part 2} & & \text{with a requirement under} \\ & & \text{Part 7 in relation to the project} \end{array}$$

Division 8—Eligible interest in an area of land

43 Eligible interest in an area of land—applicable carbon sequestration right

Eligible interest

- (1A) For the purposes of this Act, if a person holds the applicable carbon sequestration right in relation to a project area of a sequestration offsets project, the applicable carbon sequestration right is an ***eligible interest*** held by the person in the project area.

Torrens system land

- (1) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) the area of land is Torrens system land; and
 - (c) a person holds a legal estate or interest in the area of land; and
 - (d) the estate or interest is registered under a Torrens system of registration; and
 - (e) as a result of holding the estate or interest, the person has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land;

the estate or interest is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

- (2) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) the area of land is Torrens system land; and

- (c) a person has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land; and
- (d) the right is registered under a Torrens system of registration; and
- (e) under a law of a State or Territory, the right is, or is taken to be, an estate or interest in land;

the exclusive right is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

- (3) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) the area of land is Torrens system land; and
 - (c) a person has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land; and
 - (d) either:
 - (i) the right is registered under a Torrens system of registration; or
 - (ii) the area of land is Torrens system land, and the right is noted on the relevant certificate of title; and
 - (e) under a law of a State or Territory, the right runs with the relevant land;

the exclusive right is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

Crown land that is not Torrens system land

- (4) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) the area of land is Crown land in a State or Territory; and
 - (c) the area of land is not Torrens system land; and

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- (d) a person (other than the Commonwealth, the State, the Territory or a statutory authority of the Commonwealth, the State or the Territory) holds a legal estate or interest in the area of land; and
- (e) as a result of holding the estate or interest, the person has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land;

the estate or interest is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

- (5) For the purposes of the application of this Act to a sequestration offsets project, if:
 - (a) an area of land is a project area for the project; and
 - (b) the area of land is Crown land in a State or Territory; and
 - (c) the area of land is not Torrens system land; and
 - (d) a person (other than the Commonwealth, the State, the Territory or a statutory authority of the Commonwealth, the State or the Territory) has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land; and
 - (e) under a law of the State or Territory, the right is, or is taken to be, an estate or interest in land;

the exclusive right is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

- (6) For the purposes of the application of this Act to a sequestration offsets project, if:
 - (a) an area of land is a project area for the project; and
 - (b) the area of land is Crown land in a State or Territory; and
 - (c) the area of land is not Torrens system land; and
 - (d) a person (other than the Commonwealth, the State, the Territory or a statutory authority of the Commonwealth, the State or the Territory) has the exclusive legal right to obtain

the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land; and

(e) under a law of the State or Territory, the right runs with the relevant land; and

(f) it is not the case that under a law of the State or Territory, the right is, or is taken to be, an estate or interest in land;

the exclusive right is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

(7) For the purposes of the application of this Act to a sequestration offsets project, if:

(aa) an area of land is a project area for the project; and

(a) the area of land is Crown land; and

(b) the area of land is not Torrens system land; and

(c) as a result of the area being Crown land:

(i) the Commonwealth; or

(ii) a statutory authority of the Commonwealth;

has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon dioxide by trees on the area of land;

the exclusive right is the ***applicable carbon sequestration right*** held by the Commonwealth or statutory authority, as the case may be, in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

(8) For the purposes of the application of this Act to a sequestration offsets project, if:

(a) an area of land is a project area for the project; and

(b) the area of land is Crown land in a State or Territory; and

(c) the area of land is not Torrens system land; and

(d) as a result of the area of land being Crown land:

(i) the State or Territory; or

(ii) a statutory authority of the State or Territory;

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has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land;

the exclusive right is the ***applicable carbon sequestration right*** held by the State, Territory or statutory authority, as the case may be, in relation to the project area.

Note: See subsections (9) and (10), which deal with certain native title land.

Native title land

- (9) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) the area of land is native title land; and
 - (c) there is a registered native title body corporate for the area of land; and
 - (d) as a result of holding the native title, the native title holder has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon dioxide in the relevant carbon pool on the area of land;
- then:
- (e) subsections (1), (2), (3), (4), (5), (6), (7) and (8) do not apply in relation to the area of land; and
 - (f) the native title is the ***applicable carbon sequestration right*** held by the native title holder in relation to the project area.
- (10) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) the area of land is native title land; and
 - (c) as a result of holding the native title, the native title holder has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon dioxide in the relevant carbon pool on the area of land; and
 - (d) the exclusive right can be exercised by another person under a registered indigenous land use agreement that is:

- (i) with the registered native title body corporate in relation to the area of land; and
 - (ii) covered by section 24BA of the *Native Title Act 1993*;
- then:
- (e) subsections (1), (2), (3), (4), (5), (6), (7) and (8) do not apply in relation to the area of land; and
 - (f) the exclusive right is the ***applicable carbon sequestration right*** held by the other person in relation to the project area.

Regulations or legislative rules

- (11) For the purposes of the application of this Act to a sequestration offsets project, if:
- (a) an area of land is a project area for the project; and
 - (b) a person has:
 - (i) a prescribed right in relation to the area of land; or
 - (ii) a prescribed estate in the area of land; or
 - (iii) a prescribed interest in the area of land;
- the prescribed right, prescribed estate or prescribed interest, as the case may be, is the ***applicable carbon sequestration right*** held by the person in relation to the project area.

44 Eligible interest in an area of land—Torrens system land

Scope

- (1) This section applies to an area of land if the area is Torrens system land.

Eligible interest

- (2) For the purposes of this Act, if:
- (a) a person holds an estate in fee simple, or any other legal estate or interest, in the whole or a part of the area of land; and
 - (b) the estate or interest is registered under a Torrens system of registration;

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the estate or interest is an *eligible interest* held by the person in the area of land.

- (3) For the purposes of this Act, if:
- (a) under subsection (2), a person holds an eligible interest in the area of land; and
 - (b) another person:
 - (i) is a mortgagee of the eligible interest, where the mortgage is registered under a Torrens system of registration; or
 - (ii) a chargee of the eligible interest, where the charge is registered under a Torrens system of registration;
- the mortgage or charge is an *eligible interest* held by the other person in the area of land.
- (4) For the purposes of this Act, if the area of land is Crown land, the Crown lands Minister of the State or Territory holds an *eligible interest* in the area of land.
- (5) The regulations may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the regulations holds an *eligible interest* in the area of land.
- (5A) The legislative rules may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the legislative rules holds an *eligible interest* in the area of land.
- (6) For the purposes of this Act, if:
- (a) the area of land is land rights land; and
 - (b) any of the following subparagraphs applies to the area of land:
 - (i) a lease is in force over the land, and the grant of the lease took place under a law of the Commonwealth that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders;
 - (ii) subparagraph (i) does not apply, and the land is held by the Commonwealth;

- (iii) subparagraph (i) does not apply, and the land is held by a statutory authority of the Commonwealth;
- then:
- (c) if subparagraph (b)(i) applies—the Minister who administers the law mentioned in that subparagraph holds an ***eligible interest*** in the area of land; or
 - (d) if subparagraph (b)(ii) applies—the Minister who administers the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an ***eligible interest*** in the area of land; or
 - (e) if subparagraph (b)(iii) applies—the Minister who administers the Act that establishes the statutory authority holds an ***eligible interest*** in the area of land.
- (7) For the purposes of this Act, if:
- (a) the area of land is land rights land in a State or Territory; and
 - (b) the area of land is not covered by subsection (6); and
 - (c) the area of land is not freehold land rights land;
- the Crown lands Minister of the State or Territory holds an ***eligible interest*** in the area of land.

45 Eligible interest in an area of land—Crown land that is not Torrens system land

Scope

- (1) This section applies to an area of land in a State or Territory if the area of land:
- (a) is Crown land; and
 - (b) is not Torrens system land.

Eligible interest

- (2) For the purposes of this Act, if the area of land is neither:
- (a) exclusive possession native title land; nor
 - (b) land rights land;
- the Crown lands Minister of the State or Territory holds an ***eligible interest*** in the area of land.

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- (3) For the purposes of this Act, if:
- (a) a person (other than the State or Territory) holds a legal estate or interest (the ***relevant estate or interest***) in the whole or a part of the area of land; and
 - (b) any of the following conditions are satisfied:
 - (i) the relevant estate or interest came into existence as a result of a grant by the Crown in any capacity;
 - (ii) the relevant estate or interest was derived from an estate or interest that came into existence as a result of a grant by the Crown in any capacity;
 - (iii) the relevant estate or interest was created by or under a law of the Commonwealth, a State or a Territory;
 - (iv) the relevant estate or interest was derived from an estate or interest that was created by or under a law of the Commonwealth, a State or a Territory;
- the relevant estate or interest is an ***eligible interest*** held by the person in the area of land.
- (4) For the purposes of this Act, if:
- (a) under subsection (3), a person holds an eligible interest in the area of land; and
 - (b) another person:
 - (i) is a mortgagee of the eligible interest; or
 - (ii) is a chargee of the eligible interest;
- the mortgage or charge is an ***eligible interest*** held by the other person in the area of land.
- (5) The regulations may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the regulations holds an ***eligible interest*** in the area of land.
- (5A) The legislative rules may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the legislative rules holds an ***eligible interest*** in the area of land.
- (6) For the purposes of this Act, if:
- (a) the area of land is land rights land; and

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- (b) any of the following subparagraphs applies to the area of land:
- (i) a lease is in force over the land, and the grant of the lease took place under a law of the Commonwealth that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders;
 - (ii) subparagraph (i) does not apply, and the land is held by the Commonwealth;
 - (iii) subparagraph (i) does not apply, and the land is held by a statutory authority of the Commonwealth;
- then:
- (c) if subparagraph (b)(i) applies—the Minister who administers the law mentioned in that subparagraph holds an **eligible interest** in the area of land; or
 - (d) if subparagraph (b)(ii) applies—the Minister who administers the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an **eligible interest** in the area of land; or
 - (e) if subparagraph (b)(iii) applies—the Minister who administers the Act that establishes the statutory authority holds an **eligible interest** in the area of land.
- (7) For the purposes of this Act, if:
- (a) the area of land is land rights land in a State or Territory; and
 - (b) the area of land is not covered by subsection (6); and
 - (c) the area of land is not freehold land rights land;
- the Crown lands Minister of the State or Territory holds an **eligible interest** in the area of land.

45A Eligible interest in an area of land—native title land

Scope

- (1) This section applies to an area of land if:
- (a) the area of land is native title land; and

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- (b) there is a registered native title body corporate for the area of land.

Eligible interest

- (2) For the purposes of this Act, the registered native title body corporate holds an ***eligible interest*** in the area of land.

Division 10—Native title land

46 Registered native title bodies corporate—deemed project proponent

Exclusive possession native title land

- (1) For the purposes of the application of this Act to an area-based offsets project, if the following conditions are satisfied in relation to the project area, or each of the project areas, for the offsets project:
- (a) the project area is exclusive possession native title land;
 - (b) there is a registered native title body corporate for the project area;
 - (c) no person (other than a body politic, the common law holders or the registered native title body corporate) has the legal right to carry out the project;
 - (d) no person (other than a body politic, the common law holders or the registered native title body corporate) holds the applicable carbon sequestration right in relation to the project area;
- then:
- (e) the registered native title body corporate for the project area is taken to be the project proponent for the offsets project; and
 - (f) no other person is taken to be the project proponent for the project.

Native title holder has the legal right to carry out the project and holds the applicable carbon sequestration right

- (2) For the purposes of the application of this Act to an area-based offsets project, if the following conditions are satisfied in relation to the project area, or each of the project areas, for the offsets project:
- (a) the project area is native title land;

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- (b) there is a registered native title body corporate for the project area;
 - (c) the native title holder has the legal right to carry out the project;
 - (d) the native title holder holds the applicable carbon sequestration right in relation to the project area;
 - (e) subsection (1) does not apply to the project;
- then:
- (f) the registered native title body corporate for the project area is taken to be the project proponent for the offsets project; and
 - (g) no other person is taken to be the project proponent for the project.

47 Regulator to notify Crown lands Minister of declaration of eligible offsets project

Scope

- (1) This section applies if:
 - (a) a registered native title body corporate is taken, under subsection 46(1), to be the project proponent for an area-based offsets project; and
 - (b) the project area is, or any of the project areas are, in a particular State or Territory; and
 - (c) the project area is, or any of the project areas are, Crown land; and
 - (d) the project area is not, or the project areas are not, Torrens system land; and
 - (e) the Regulator makes a declaration under section 27 in relation to the project.

Notification

- (2) As soon as practicable after making the declaration, the Regulator must notify the Crown lands Minister of the State or Territory, in writing, of the making of the declaration.

48 Designation of special native title account

Scope

- (1) This section applies if a registered native title body corporate is taken, under section 46, to be the project proponent for an eligible offsets project.

Request for special native title account

- (2) The registered native title body corporate may:
- (a) request the Regulator, under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, to open a Registry account in the name of the registered native title body corporate; and
 - (b) request the Regulator to designate that account as the special native title account for the eligible offsets project.
- (3) A request under paragraph (2)(b) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the regulations or the legislative rules; and
 - (d) be accompanied by such other documents (if any) as are specified in the regulations or the legislative rules; and
 - (e) be accompanied by the fee (if any) specified in the regulations or the legislative rules.
- (4) The approved form of request may provide for verification by statutory declaration of statements in requests.
- (5) A fee specified under paragraph (3)(e) must not be such as to amount to taxation.

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Designation of special native title account

- (6) After considering a request under paragraph (2)(b), the Regulator may designate the Registry account as the ***special native title account*** for the eligible offsets project.

49 Issue of Australian carbon credit units to special native title account

Scope

- (1) This section applies if a registered native title body corporate is taken, under section 46, to be the project proponent for an eligible offsets project.

Application for issue of Australian carbon credit units

- (2) If the registered native title body corporate makes an application under section 12 for the issue of a certificate of entitlement in respect of the project for a reporting period, paragraph 13(1)(c) does not apply to the application.

Note: Paragraph 13(1)(c) requires the application to set out the account number of a Registry account.

Issue of Australian carbon credit units

- (3) If:
- (a) a special native title account for the project is kept in the name of the registered native title body corporate; and
 - (b) apart from this subsection, the Regulator is required under section 11 to issue one or more Australian carbon credit units to the registered native title body corporate in relation to the eligible offsets project;
- then:
- (c) the Regulator must comply with the requirement by issuing the units to the registered native title body corporate and making an entry for the units in the special native title account; and

- (d) subsections 11(5) and (6) do not apply to the issue of the units.
- (4) If:
 - (a) there is not a special native title account for the project; and
 - (b) apart from this subsection, the Regulator is required under section 11 to issue one or more Australian carbon credit units to the registered native title body corporate in relation to the eligible offsets project;the Regulator must not issue the units.

50 Units held in special native title account

Scope

- (1) This section applies to a Registry account that has been designated as the special native title account for an eligible offsets project, so long as the project is an area-based offsets project.

Units held in account

- (2) Australian carbon credit units held in the special native title account are held in trust for the persons who are, for the time being, the common law holders of the native title in relation to the project area, or each of the project areas, for the project.

51 Regulations or legislative rules about consulting common law holders etc.

- (1) The regulations or the legislative rules may make provision for a registered native title body corporate to consult, and act in accordance with the directions of, the common law holders in relation to anything done by the registered native title body corporate under, or in connection with:
 - (a) this Act, the regulations or the legislative rules; or
 - (b) the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act.

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- (2) The regulations or the legislative rules may make provision for a registered native title body corporate to be the agent of the common law holders for the purposes of giving a consent under this Act, the regulations or the legislative rules.

Division 11—Freehold land rights land

52 Regulator to notify Crown lands Minister of declaration of eligible offsets project

Scope

- (1) This section applies if:
 - (a) the Regulator makes a declaration under section 27 in relation to an area-based offsets project; and
 - (b) the project area is, or any of the project areas are, freehold land rights land in a particular State or Territory; and
 - (c) the project area is, or any of the project areas are, Crown land; and
 - (d) the project area is not, or the project areas are not, Torrens system land.

Notification

- (2) As soon as practicable after making the declaration, the Regulator must notify the Crown lands Minister of the State or Territory, in writing, of the making of the declaration.

Division 12—Types of projects

53 Emissions avoidance offsets projects

- (1) For the purposes of this Act, a project is an *emissions avoidance offsets project* if it is:
 - (a) an agricultural emissions avoidance project; or
 - (b) a landfill legacy emissions avoidance project; or
 - (c) any other project to avoid emissions of greenhouse gases.
- (2) Paragraphs (1)(a) and (b) do not limit paragraph (1)(c).
- (3) For the purposes of this Act, a project is not an *emissions avoidance offsets project* if the project is a sequestration offsets project.

53A Area-based emissions avoidance projects

- (1) For the purposes of this Act, an emissions avoidance offsets project is an *area-based emissions avoidance project* if it is a project of a kind specified in the legislative rules.
- (2) Subsection (1) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

54 Sequestration offsets projects

For the purposes of this Act, a project is a *sequestration offsets project* if it is a project:

- (a) to remove carbon dioxide from the atmosphere by sequestering carbon in one or more of the following:
 - (i) living biomass;
 - (ii) dead organic matter;
 - (iii) soil; or

- (b) to remove carbon dioxide from the atmosphere by sequestering carbon in, and to avoid emissions of greenhouses gases from, one or more of the following:
 - (i) living biomass;
 - (ii) dead organic matter;
 - (iii) soil.

56 Excluded offsets projects

- (1) For the purposes of this Act, an offsets project is an ***excluded offsets project*** if it is a project of a kind specified in the regulations or the legislative rules.
- (2) In deciding whether to recommend to the Governor-General that regulations should be made for the purposes of subsection (1) specifying a particular kind of project, and in deciding whether to make legislative rules for the purposes of subsection (1) specifying a particular kind of project, the Minister must have regard to whether there is a material risk that that kind of project will have a material adverse impact on one or more of the following:
 - (a) the availability of water;
 - (b) the conservation of biodiversity;
 - (c) employment;
 - (d) the local community;
 - (e) land access for agricultural production.
- (3) Subsection (1) of this section does not, by implication, limit the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

Division 13—Restructure of eligible offsets projects

57 Restructure of eligible offsets projects

- (1) For the purposes of this section, if:
- (a) as the result of the variation or revocation of a section 27 declaration, an area of land (the **relevant area**) ceases to be, or ceases to be part of, the project area, or any of the project areas, for an eligible offsets project that is a sequestration offsets project; and
 - (b) as a result of the making or variation of another section 27 declaration, the relevant area becomes, or becomes part of, the project area, or any of the project areas, for another eligible offsets project that is a sequestration offsets project;
- then:
- (c) the project mentioned in paragraph (a) is the **transferor offsets project**; and
 - (d) the project mentioned in paragraph (b) is the **transferee offsets project**.

Regulations or legislative rules

- (2) The regulations or the legislative rules may make provision for or in relation to the adjustment of any or all of the following:
- (a) the calculation of a unit entitlement in relation to the transferee offsets project using the formula in subsection 16(2);
 - (b) the calculation of a unit entitlement in relation to the transferor offsets project using the formula in subsection 16(2);
 - (c) the calculation of the net total number of Australian carbon credit units issued in relation to the transferee offsets project in accordance with Part 2;
 - (d) the calculation of the net total number of Australian carbon credit units issued in relation to the transferor offsets project in accordance with Part 2;

- (e) the duration of a crediting period for the transferee offsets project;
- (f) the duration of a reporting period for the transferee offsets project.

Determinations

- (3) Regulations or legislative rules made for the purposes of subsection (2) may empower the Regulator to determine that, whenever it is necessary to calculate a unit entitlement in relation to the transferor offsets project using the formula in subsection 16(2), that subsection has effect, in relation to the transferor offsets project, as if the net abatement number were decreased by the number specified in the determination.
- (4) Regulations or legislative rules made for the purposes of subsection (2) may empower the Regulator to determine that, whenever it is necessary to calculate a unit entitlement in relation to the transferee offsets project using the formula in subsection 16(2), that subsection has effect, in relation to the transferee offsets project, as if the net abatement number were increased by the number specified in the determination.
- (5) Regulations or legislative rules made for the purposes of subsection (2) may empower the Regulator to determine that, whenever it is necessary to work out the net total number of Australian carbon credit units issued in relation to the transferor offsets project, this Act has effect, in relation to the transferor offsets project, as if the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2 were decreased by the number specified in the determination.
- (6) Regulations or legislative rules made for the purposes of subsection (2) may empower the Regulator to determine that, whenever it is necessary to work out the net total number of Australian carbon credit units issued in relation to the transferee offsets project, this Act has effect, in relation to the transferee offsets project, as if the net total number of Australian carbon

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credit units issued in relation to the project in accordance with Part 2 were increased by the number specified in the determination.

- (7) Subsections (3) to (6) do not limit subsection (2).

Determination is not a legislative instrument

- (8) A determination made under regulations or legislative rules made for the purposes of subsection (2) is not a legislative instrument.

Part 4—Fit and proper person test

59 Simplified outline of this Part

- A person passes the fit and proper person test if:
 - (a) the person is a fit and proper person; and
 - (b) the person is not an insolvent under administration; and
 - (c) the person is not an externally-administered body corporate.

60 Fit and proper person test

Individual

- (1) For the purposes of this Act, an individual passes the ***fit and proper person test*** if:
- (a) the individual is a fit and proper person, having regard to:
 - (i) whether any of the events specified in the legislative rules have happened in relation to the individual; and
 - (ii) such other matters (if any) as are specified in the legislative rules; and
 - (b) the individual is not an insolvent under administration.

Body corporate

- (2) For the purposes of this Act, a body corporate passes the ***fit and proper person test*** if:
- (a) the body corporate is a fit and proper person, having regard to:
 - (i) whether any of the events specified in the legislative rules have happened in relation to the body corporate; and

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- (ii) whether any of the events specified in the legislative rules have happened in relation to an executive officer of the body corporate; and
- (iii) such other matters (if any) as are specified in the legislative rules; and
- (b) the body corporate is not an externally-administered body corporate.

Spent convictions

- (3) Legislative rules made for the purposes of subparagraph (1)(a)(i) or (ii) or (2)(a)(i), (ii) or (iii) must not affect the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* 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.

Part 5—Crediting period

68 Simplified outline of this Part

- Generally, the crediting period for an eligible offsets project is:
 - (a) 25 years for a sequestration offsets project; or
 - (b) 7 years for an emissions avoidance offsets project.
- However, the applicable methodology determination for the project may specify a different crediting period.
- An eligible offsets project cannot have more than one crediting period.
- However, transitional rules apply if a project was an eligible offsets project immediately before the commencement of this Part.

Note: Under section 15, the general rule is that the Regulator may only issue a certificate of entitlement to Australian carbon credit units in relation to a reporting period for an eligible offsets project if the reporting period is included in a crediting period for the project.

69 Crediting period—basic rule

Scope

- (1) This section applies to an eligible offsets project if the project became an eligible offsets project after the commencement of this Part.

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Sequestration offsets project or designated savanna project

- (2) If the project is a sequestration offsets project or a designated savanna project, then, for the purposes of this Act, the **crediting period** for the project is:
- (a) the period of 25 years; or
 - (b) if another period is specified in the applicable methodology determination for the project—that other period;
- that began at the start time worked out under subsection (4).

Emissions avoidance offsets project

- (3) If the project is an emissions avoidance offsets project (other than a designated savanna project), then, for the purposes of this Act, the **crediting period** for the project is:
- (a) the period of 7 years; or
 - (b) if another period is specified in the applicable methodology determination for the project—that other period;
- that began at the start time worked out under subsection (4).

Start time

- (4) For the purposes of this section, the **start time** is:
- (a) if:
 - (i) the application for the declaration of the project under section 27 included a statement to the effect that the crediting period for the project should begin at a specified time; and
 - (ii) the specified time occurs after the declaration takes effect; and
 - (iii) the specified time complies with subsection (5); and
 - (iv) the specified time was not varied under paragraph (b);the specified time; or
 - (b) if:
 - (i) the application for the declaration of the project under section 27 included a statement to the effect that the

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- crediting period for the project should begin at a specified time; and
- (ii) after the project became an eligible offsets project, the project proponent, by written notice given to the Regulator, varied the specified time; and
 - (iii) the varied time complies with subsection (5); and
 - (iv) the project proponent has not previously varied the specified time; and
 - (v) the notice was given at or before the time when the offsets report for the project was given under subsection 76(1);
- the varied time; or
- (c) otherwise—the time when the declaration of the project under section 27 took effect.

Limit on deferral of start of crediting period

- (5) A time complies with this subsection if:
 - (a) the time is not later than 18 months after the declaration of the project under section 27 took effect; or
 - (b) if:
 - (i) another number of months is specified in the legislative rules in relation to a particular kind of project; and
 - (ii) the project is of that kind;the time is not later than that other number of months after the declaration of the project under section 27 took effect.

No subsequent crediting periods

- (6) The project cannot have more than one crediting period.

Other matters

- (7) A notice under subparagraph (4)(b)(ii) may be included in the offsets report for the project given under subsection 76(1).

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- (8) Paragraph (5)(b) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

70 Crediting period—general transitional rule

Scope

- (1) This section applies to an eligible offsets project if:
- (a) the project was an eligible offsets project immediately before the commencement of this Part; and
 - (b) the project is not covered by the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013*.

Project has 2 crediting periods

- (2) If the project is a sequestration offsets project, then, for the purposes of this Act, the project has 2 crediting periods, as follows:
- (a) the first crediting period for the project is the period:
 - (i) beginning when the declaration of the project under section 27 took effect; and
 - (ii) ending immediately before the commencement of this Part;
 - (b) the second crediting period for the project is:
 - (i) the period of 25 years; or
 - (ii) if another period is specified in the applicable methodology determination for the project—that other period;that began at the commencement of this Part.
- (3) If:
- (a) the project is an emissions avoidance offsets project; and
 - (b) the project is not a designated savanna project;
- then, for the purposes of this Act, the project has 2 crediting periods, as follows:
- (c) the first crediting period for the project is the period:

- (i) beginning when the declaration of the project under section 27 took effect; and
 - (ii) ending immediately before the commencement of this Part;
 - (d) the second crediting period for the project is:
 - (i) the period of 7 years; or
 - (ii) if another period is specified in the applicable methodology determination for the project—that other period;that began at the commencement of this Part.
- (4) If:
- (a) the project is an emissions avoidance offsets project; and
 - (b) the project is a designated savanna project;
- then, for the purposes of this Act, the project has 2 crediting periods, as follows:
- (c) the first crediting period for the project is the period:
 - (i) beginning when the declaration of the project under section 27 took effect; and
 - (ii) ending immediately before 1 January next following the commencement of this Part;
 - (d) the second crediting period for the project is:
 - (i) the period of 25 years; or
 - (ii) if another period is specified in the applicable methodology determination for the project—that other period;that began at the start of 1 January next following the commencement of this Part.

No subsequent crediting periods

- (5) The project cannot have more than 2 crediting periods.

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71 Crediting period—transitional rule for avoided deforestation projects

Scope

- (1) This section applies to an eligible offsets project if:
 - (a) either:
 - (i) the project was an eligible offsets project immediately before the commencement of this Part; or
 - (ii) the project became an eligible offsets project after the commencement of this Part as the result of an ERF transitional application (within the meaning of Division 2 of Part 2 of Schedule 1 to the *Carbon Farming Initiative Amendment Act 2014*); and
 - (b) the project is covered by the *Carbon Credits (Carbon Farming Initiative) (Avoided Deforestation) Methodology Determination 2013*.

Crediting period

- (2) Despite any other provision of this Part, the crediting period for the project is:
 - (a) the first crediting period for the project worked out under section 69 as it stood immediately before the commencement of this Part; or
 - (b) if another period is specified in the applicable methodology determination for the project—that other period that began when the declaration of the project under section 27 took effect.

No subsequent crediting periods

- (3) The project cannot have more than one crediting period.

Part 6—Reporting and notification requirements

Division 1—Introduction

75 Simplified outline

The following is a simplified outline of this Part:

- The project proponent for an eligible offsets project must give the Regulator an offsets report for a period that is expressed to be a reporting period for the project.
- The first reporting period must begin at the start of the crediting period for the project.
- Each subsequent reporting period must begin immediately after the end of the previous reporting period.
- A reporting period for a sequestration offsets project must not be:
 - (a) shorter than 6 months (or such lesser number of months as is specified in the legislative rules); or
 - (b) longer than 5 years.
- A reporting period for an emissions avoidance offsets project must not be:
 - (a) shorter than 6 months (or such lesser number of months as is specified in the legislative rules); or
 - (b) longer than 2 years.
- The Regulator must be notified of certain events relating to eligible offsets projects.

Division 2—Reporting requirements

76 Offsets reports

Report for first reporting period

- (1) The project proponent for an eligible offsets project must, in accordance with this section, give the Regulator a written report about the project for a period that:
 - (a) is expressed to be a reporting period for the project; and
 - (b) begins:
 - (i) if the project has a single crediting period—at the start of that crediting period; or
 - (ii) if the project has 2 crediting periods—at the start of the first crediting period; and
 - (c) is not shorter than:
 - (i) 6 months; or
 - (ii) if, under the legislative rules, a specified lesser number of months is the minimum number of months applicable to the report—that specified lesser number of months; and
 - (d) if the project is a sequestration offsets project—is not longer than 5 years; and
 - (e) if the project is an emissions avoidance offsets project—is not longer than 2 years.

Note: Under section 15, the general rule is that the Regulator may only issue a certificate of entitlement to Australian carbon credit units in relation to a reporting period for an eligible offsets project if the reporting period is included in a crediting period for the project.

Reports for subsequent reporting periods

- (2) The project proponent for an eligible offsets project must, in accordance with this section, give the Regulator a written report about the project for a period that:
 - (a) is expressed to be a reporting period for the project; and

- (b) begins immediately after the end of the previous reporting period for the project; and
- (c) is not shorter than:
 - (i) 6 months; or
 - (ii) if, under the legislative rules, a specified lesser number of months is the minimum number of months applicable to the report—that specified lesser number of months; and
- (d) if the project is a sequestration offsets project—is not longer than 5 years; and
- (e) if the project is an emissions avoidance offsets project—is not longer than 2 years; and
- (f) if the project is an emissions avoidance offsets project—is included in:
 - (i) a crediting period for the project; or
 - (ii) the extended accounting period (if any) for the project.

Note 1: Under section 15, the general rule is that the Regulator may only issue a certificate of entitlement to Australian carbon credit units in relation to a reporting period for an eligible offsets project if the reporting period is included in a crediting period for the project.

Note 2: See also section 77.

Offsets report

- (3) A report under this section is to be known as an ***offsets report***.

Offsets report requirements

- (4) An offsets report about a project for a reporting period must:
 - (a) be given in the manner and form prescribed by the regulations or the legislative rules; and
 - (b) set out the information specified in the regulations or the legislative rules; and
 - (c) if, under the legislative rules, the offsets report is subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the legislative 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 the purpose; and
 - (ca) if:
 - (i) under the legislative rules, a set of 2 or more offsets reports given by the project proponent is subject to audit under this Act; and
 - (ii) the offsets report is included in that set;be accompanied by an audit report that is:
 - (iii) prescribed by the legislative rules; and
 - (iv) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (cb) if, before the offsets report was given to the Regulator, the Regulator gave the project proponent a written notice stating that the offsets report would be subject to audit under this Act—be accompanied by an audit report that is:
 - (i) prescribed by the legislative rules; and
 - (ii) prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (cc) if a notice under section 77A is relevant to the offsets report—be accompanied by a copy of that notice; and
 - (d) be accompanied by such other documents (if any) as are specified in the regulations or the legislative rules; and
 - (e) be given to the Regulator within:
 - (i) 6 months after the end of the reporting period; or
 - (ii) if a greater number of months is specified in the applicable methodology determination for the project—that greater number of months after the end of the reporting period.
- (5) The Regulator must not give a notice under paragraph (4)(cb) unless the Regulator is satisfied that it is appropriate to do so, having regard to effective risk management.

- (6) To avoid doubt, an offsets report for a period may deal with matters that occur before the start of that period.
- (7) If, under the applicable methodology determination, the project proponent for the project is subject to a requirement to include specified information relating to the project in the offsets report, the offsets report must include that information.
- (8) If the following conditions are satisfied in relation to 2 or more eligible offsets projects:
 - (a) the relevant section 27 declarations were made as a result of applications covered by a particular subsection 26(2) determination;
 - (b) a particular person is the project proponent for the projects; offsets reports relating to those projects may be set out in the same document.
- (9) Information specified in regulations or legislative rules made for the purposes of paragraph (4)(b) may relate to a matter arising before, during or after the reporting period.
- (10) A document specified in regulations or legislative rules made for the purposes of paragraph (4)(d) may relate to a matter arising before, during or after the reporting period.

Ancillary contraventions

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

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Civil penalty provisions

- (12) Subsections (1), (2) and (11) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

77 Declaration that offsets report requirement does not apply

Regulations or legislative rules

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to declare that subsection 76(2) does not apply to a particular eligible offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to make a declaration unless:
 - (a) the project is a sequestration offsets project; and
 - (b) the project proponent for the project applies to the Regulator for the declaration; and
 - (c) the Regulator is satisfied that the project has reached its maximum carbon sequestration capacity.
- (3) Regulations or legislative rules made for the purposes of subsection (1) may make provision for or in relation to any or all of the following matters:
 - (a) applications for declarations under those regulations or legislative rules, as the case may be;
 - (b) the approval by the Regulator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) the fee (if any) that must accompany such an application;
 - (g) the withdrawal of such an application;

- (h) empowering the Regulator:
 - (i) to require an applicant to give the Regulator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (4) Subsection (3) does not limit subsection (1).
- (5) A fee mentioned in paragraph (3)(f) must not be such as to amount to taxation.

When a declaration takes effect

- (6) A declaration under regulations or legislative rules made for the purposes of subsection (1) takes effect:
 - (a) when it is made; or
 - (b) if a later day is specified in the declaration—on that later day.

77A Offsets report may be about a part of a project etc.

Notice dividing the overall project into 2 or more parts

- (1) The project proponent for an eligible offsets project (the **overall project**) may, by written notice given to the Regulator, choose to:
 - (a) divide the overall project into 2 or more specified parts, for the purposes of the application of this section to a specified period that ends after the notice is given; and
 - (b) give the Regulator:
 - (i) offsets reports; and
 - (ii) applications for certificates of entitlement; for that period as if each of those parts were an eligible offsets project in its own right.
- (2) The division of the overall project must comply with such requirements (if any) as are set out in the applicable methodology determination for the overall project.

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Consequences of notice

- (3) If a notice has been given under subsection (1):
- (a) this Division has effect, in relation to an offsets report for the period specified in the notice, as if:
 - (i) each such part of the overall project was an eligible offsets project in its own right; and
 - (ii) the project proponent for each such part of the overall project was the project proponent for the overall project; and
 - (iii) each such part of the overall project was the subject of a section 27 declaration that took effect when the section 27 declaration of the overall project took effect; and
 - (iv) this Division did not require the giving of an offsets report for the whole of the overall project; and
 - (b) Part 2 has effect, in relation to:
 - (i) a certificate of entitlement; and
 - (ii) an application for a certificate of entitlement;for the period specified in the notice, as if:
 - (iii) each such part of the overall project was an eligible offsets project in its own right; and
 - (iv) the project proponent for each such part of the overall project was the project proponent for the overall project; and
 - (v) a crediting period for each such part of the overall project was a crediting period for the overall project; and
 - (vi) each such part of the overall project was the subject of a section 27 declaration that took effect when the section 27 declaration of the overall project took effect, and that is subject to the same conditions (if any) as the section 27 declaration of the overall project; and
 - (vii) Part 2 prohibited the making of such an application for a certificate of entitlement in respect of the whole of the overall project; and

- (c) for the purposes of this Act, treat Australian carbon credit units issued in relation to such a part of the overall project in accordance with Part 2 as if they had been issued in relation to the overall project in accordance with that Part.

Division 3—Notification requirements

78 Notification requirement—ceasing to be the project proponent for an eligible offsets project otherwise than because of death

Scope

- (1) This section applies to a person if the person ceases to be the project proponent for an eligible offsets project otherwise than because of the death of the person.

Notification

- (2) The person must, within 90 days after the cessation occurs, notify the Regulator, in writing, of the cessation.

Ancillary contraventions

- (3) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

79 Notification requirement—death of the project proponent for an eligible offsets project

Scope

- (1) This section applies if a person who is the project proponent for an eligible offsets project dies.

Notification

- (2) The person's legal personal representative must, within 90 days after the death, notify the Regulator, in writing, of the death.

Ancillary contraventions

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

80 Notification requirement—methodology determinations

Scope

- (1) This section applies if:
- (a) there is an eligible offsets project; and

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- (b) under the applicable methodology determination, the project proponent for the project is subject to a requirement to notify the Regulator of one or more matters relating to the project.

Notification

- (2) The project proponent must comply with the requirement.

Ancillary contraventions

- (3) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

81 Notification requirement—natural disturbances

Scope

- (1) This section applies to an eligible offsets project if the project is:
 - (a) a sequestration offsets project to remove carbon dioxide from the atmosphere; or
 - (b) a sequestration offsets project to remove carbon dioxide from the atmosphere and to avoid emissions of greenhouse gases.

Notification

- (2) The project proponent for the project must:
- (a) notify the Regulator, in writing, of:
 - (i) a natural disturbance that causes a reversal of the removal; or
 - (ii) a natural disturbance that is likely to cause a reversal of the removal; and
 - (b) do so within 60 days after the project proponent becomes aware that the natural disturbance has happened.
- (3) Subsection (2) does not apply to a reversal unless the reversal is, under the regulations or the legislative rules, taken to be a significant reversal.

Ancillary contraventions

- (4) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (5) Subsections (2) and (4) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

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82 Notification requirement—reversal of sequestration due to conduct of another person

Scope

- (1) This section applies to an eligible offsets project if the project is:
 - (a) a sequestration offsets project to remove carbon dioxide from the atmosphere; or
 - (b) a sequestration offsets project to remove carbon dioxide from the atmosphere and to avoid emissions of greenhouse gases.

Notification

- (2) The project proponent for the project must:
 - (a) notify the Regulator, in writing, of conduct engaged in by a person (other than the project proponent), where the conduct:
 - (i) is not within the reasonable control of the project proponent; and
 - (ii) causes a reversal of the removal; and
 - (b) do so within 60 days after the project proponent becomes aware that the conduct has been engaged in.
- (3) The project proponent for the project must:
 - (a) notify the Regulator, in writing, of conduct engaged in by a person (other than the project proponent), where the conduct:
 - (i) is not within the reasonable control of the project proponent; and
 - (ii) is likely to cause a reversal of the removal; and
 - (b) do so within 60 days after the project proponent becomes aware that the conduct has been engaged in.
- (4) Subsections (2) and (3) do not apply to a reversal unless the reversal is, under the regulations or the legislative rules, taken to be a significant reversal.

Ancillary contraventions

- (5) A person must not:
-

- (a) aid, abet, counsel or procure a contravention of subsection (2) or (3); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2) or (3); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2) or (3); or
- (d) conspire with others to effect a contravention of subsection (2) or (3).

Civil penalty provisions

- (6) Subsections (2), (3) and (5) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

83 Notification requirement—project becomes inconsistent with a regional natural resource management plan

Scope

- (1) This section applies if:
- (a) there is an eligible offsets project; and
 - (aa) the project is an area-based offsets project; and
 - (b) the project area, or any of the project areas, for the project is covered by a regional natural resource management plan; and
 - (c) as a result of a change to the project, the project becomes inconsistent with the plan.

Notification

- (2) The project proponent for the project must, within 90 days after the change, notify the Regulator, in writing, of:
- (a) the change; and
 - (b) the inconsistency.
- (3) A person must not:

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- (a) aid, abet, counsel or procure a contravention of subsection (2); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
- (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

84 Notification requirement—event relevant to whether a project proponent is a fit and proper person

Scope

- (1) This section applies to a person if:
- (a) the person is a project proponent for an eligible offsets project; and
 - (b) in a case where the person is an individual:
 - (i) an event set out in legislative rules made for the purposes of subparagraph 60(1)(a)(i) happens in relation to the individual; or
 - (ii) the individual becomes an insolvent under administration; and
 - (c) in a case where the person is a body corporate:
 - (i) an event set out in legislative rules made for the purposes of subparagraph 60(2)(a)(i) happens in relation to the body corporate; or
 - (ii) the body corporate becomes an externally-administered body corporate; or

- (iii) an event set out in legislative rules made for the purposes of subparagraph 60(2)(a)(ii) happens in relation to an executive officer of the body corporate.

For the purposes of subparagraphs (b)(i) and (c)(i) and (iii), disregard an event that consists of a breach of a climate change law (within the meaning of the *Clean Energy Regulator Act 2011*).

Notification

- (2) The person must, within 90 days after the event, notify the Regulator, in writing, of the event.

Ancillary contraventions

- (3) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

85 Regulations or legislative rules may impose notification requirements

Scope

- (1) This section applies if a person is the project proponent for an eligible offsets project.

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Regulations or legislative rules

- (2) The regulations or the legislative rules may make provision requiring the person to notify the Regulator of a matter.
- (3) Regulations or legislative rules made for the purposes of subsection (2) may make different provision with respect to different project proponents. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) A matter specified in regulations or legislative rules made for the purposes of subsection (2) must be relevant to the operation of this Act.

Requirement

- (5) If a person is subject to a requirement under regulations or legislative rules made for the purposes of subsection (2), the person must comply with that requirement.

Ancillary contraventions

- (6) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (5); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (5); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (5); or
 - (d) conspire with others to effect a contravention of subsection (5).

Civil penalty provisions

- (7) Subsections (5) and (6) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

Part 7—Requirements to relinquish Australian carbon credit units

Division 1—Introduction

86 Simplified outline

The following is a simplified outline of this Part:

- Australian carbon credit units may be required to be relinquished if:
 - (a) the issue of the units is attributable to the giving of false or misleading information; or
 - (b) the units were issued in relation to a sequestration offsets project, and the declaration of the sequestration offsets project as an eligible offsets project has been revoked; or
 - (c) the units were issued in relation to a sequestration offsets project, and there has been a complete or partial reversal of sequestration.

86A Permanence period

For the purposes of this Act, the *permanence period* for an eligible offsets project is:

- (a) if the project is a 100-year permanence period project—the 100-year permanence period for the project; or
- (b) if the project is a 25-year permanence period project—25 years.

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87 100-year permanence period

- (1) For the purposes of this Act, the *100-year permanence period* for an eligible offsets project is:
- (a) 100 years; or
 - (b) if, at the time when the declaration of the project as an eligible offsets project was made, a greater number of years was specified in the regulations or the legislative rules—that greater number of years.
- (2) However, if:
- (a) the regulations or the legislative rules specify a number of years that is less than 100 years; and
 - (b) those regulations or legislative rules, as the case may be, are made after the time when the declaration of a project as an eligible offsets project was made;
- then, despite subsection (1), that lesser number of years is the *100-year permanence period* for the eligible offsets project.

Division 2—General relinquishment requirements

88 Requirement to relinquish—false or misleading information

Scope

- (1) This section applies if:
 - (a) a number of Australian carbon credit units have been issued to a person in relation to an eligible offsets project; and
 - (b) information was given by the person to the Regulator in connection with the project; and
 - (c) the information was:
 - (i) contained in an application under this Act, the regulations or the legislative rules; or
 - (ii) given in connection with an application under this Act, the regulations or the legislative rules; or
 - (iii) contained in an offsets report; or
 - (iv) contained in a notification under Part 6; and
 - (d) the information was false or misleading in a material particular; and
 - (e) the issue of any or all of the units was directly or indirectly attributable to the false or misleading information.

Relinquishment

- (2) The Regulator may, by written notice given to the person, require the person to relinquish a specified number of Australian carbon credit units.
- (3) The specified number must not exceed the number of Australian carbon credit units the issue of which was directly or indirectly attributable to the false or misleading information.
- (6) The person must comply with the requirement within 90 days after the notice was given.

Part 7 Requirements to relinquish Australian carbon credit units

Division 2 General relinquishment requirements

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Note: An administrative penalty is payable under section 179 for non-compliance with a relinquishment requirement.

Division 3—Relinquishment requirements for sequestration offsets projects

89 Requirement to relinquish—revocation of declaration of eligible offsets project

Scope

- (1) This section applies if:
- (a) an eligible offsets project is a sequestration offsets project;
and
 - (b) a number of Australian carbon credit units have been issued
in relation to the project; and
 - (c) the declaration of the project as an eligible offsets project is
revoked under regulations or legislative rules made for the
purposes of any of the following provisions:
 - (i) subsection 35(1);
 - (ii) subsection 36(1);
 - (iii) subsection 37(1);
 - (iv) subsection 38(1);
 - (v) subsection 139(1); and
 - (d) if the declaration has never been varied so as to add one or
more project areas—the period that has passed since the first
occasion on which an Australian carbon credit unit was
issued in relation to the project in accordance with Part 2 is
shorter than the permanence period for the project; and
 - (e) if the declaration has been varied so as to add one or more
project areas—the period that has passed since the last
occasion on which the declaration was so varied is shorter
than the permanence period for the project.

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Relinquishment

- (2) The Regulator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of Australian carbon credit units.
- (3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) The project proponent must comply with the requirement within 90 days after the notice was given.

Note: An administrative penalty is payable under section 179 for non-compliance with a relinquishment requirement.

90 Requirement to relinquish—reversal of sequestration other than due to natural disturbance or conduct etc.

Scope

- (1) This section applies if:
 - (a) an eligible offsets project is a sequestration offsets project to remove carbon dioxide from the atmosphere; and
 - (b) a number of Australian carbon credit units have been issued in relation to the project; and
 - (c) there has been a reversal of the removal; and
 - (d) the reversal is, under the regulations or the legislative rules, taken to be a significant reversal; and
 - (e) the reversal is not attributable to:
 - (i) natural disturbance; or
 - (ii) reasonable actions taken to reduce the risk of bushfire; or
 - (iii) conduct engaged in by a person (other than the project proponent for the project), where the conduct is not within the reasonable control of the project proponent; and

- (f) if the relevant section 27 declaration has never been varied so as to add one or more project areas—the period that has passed since the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2 is shorter than the permanence period for the project; and
- (g) if the relevant section 27 declaration has been varied so as to add one or more project areas—the period that has passed since the last occasion on which the declaration was so varied is shorter than the permanence period for the project.

Relinquishment

- (2) The Regulator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of Australian carbon credit units.
- (3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) The project proponent must comply with the requirement within 90 days after the notice was given.

Note: An administrative penalty is payable under section 179 for non-compliance with a relinquishment requirement.

91 Requirement to relinquish—reversal of sequestration due to natural disturbance or conduct and no mitigation happens

Scope

- (1) This section applies if:
 - (a) an eligible offsets project is a sequestration offsets project to remove carbon dioxide from the atmosphere; and
 - (b) a number of Australian carbon credit units have been issued in relation to the project; and
 - (c) there has been a reversal of the removal; and

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- (d) the reversal is, under the regulations or the legislative rules, taken to be a significant reversal; and
- (e) the reversal is attributable to:
 - (i) natural disturbance; or
 - (ii) conduct engaged in by a person (other than the project proponent for the project), where the conduct is not within the reasonable control of the project proponent; and
- (f) the Regulator is not satisfied that the project proponent has, within a reasonable period, taken reasonable steps to mitigate the effect of the natural disturbance or conduct, as the case may be, on the project; and
- (g) if the relevant section 27 declaration has never been varied so as to add one or more project areas—the period that has passed since the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2 is shorter than the permanence period for the project; and
- (h) if the relevant section 27 declaration has been varied so as to add one or more project areas—the period that has passed since the last occasion on which the declaration was so varied is shorter than the permanence period for the project.

Relinquishment

- (2) The Regulator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of Australian carbon credit units.
- (3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) The project proponent must comply with the requirement within 90 days after the notice was given.

Note: An administrative penalty is payable under section 179 for non-compliance with a relinquishment requirement.

Part 8—Carbon maintenance obligation

Division 1—Introduction

96 Simplified outline

The following is a simplified outline of this Part:

- A carbon maintenance obligation may be imposed in relation to an area or areas of land if a relinquishment requirement has not been complied with.

Division 2—Carbon maintenance obligation

97 Carbon maintenance obligation

Relevant area of land

- (1) For the purposes of this section, each of one or more areas of land is a **relevant area of land** if:
- (a) the following conditions are satisfied:
 - (i) a sequestration offsets project is or was an eligible offsets project;
 - (ii) a notice was given under section 88, 89, 90 or 91 in relation to the project;
 - (iii) the area was, or the areas were, identified in the relevant section 27 declaration as the project area or project areas for the eligible offsets project;
 - (iv) the notice required a person to relinquish a particular number of Australian carbon credit units;
 - (v) the person did not comply with the requirement within 90 days after the notice was given; or
 - (b) the following conditions are satisfied:
 - (i) a sequestration offsets project is or was an eligible offsets project;
 - (ii) a notice was given under section 88, 89, 90 or 91 in relation to the project;
 - (iii) the area was, or the areas were, identified in the relevant section 27 declaration as the project area or project areas for the eligible offsets project;
 - (iv) the notice required a person to relinquish a particular number of Australian carbon credit units;
 - (v) the Regulator is satisfied that it is likely that the person will not comply with the requirement within 90 days after the notice was given; or
 - (c) the Regulator is satisfied that:

- (i) a sequestration offsets project is or was an eligible offsets project; and
- (ii) it is likely that a notice will be given under section 88, 89, 90 or 91 in relation to the project; and
- (iii) the area is, or the areas are, identified in the relevant section 27 declaration as the project area or project areas for the eligible offsets project; and
- (iv) the notice is likely to require a person to relinquish a particular number of Australian carbon credit units; and
- (v) it is likely that the person will not comply with the requirement within 90 days after the notice is given.

Declaration

- (2) The Regulator may, by writing, declare that:
 - (a) a specified area, or one or more of specified areas, of land are subject to a **carbon maintenance obligation**; and
 - (b) an activity (if any) specified in the declaration is a **permitted carbon activity** in relation to the area or areas of land for the purposes of this Act.

Note: For specification by class, see the *Acts Interpretation Act 1901*.

- (2A) A specified area must consist of the whole or a part of a relevant area of land.
- (3) If an area or areas of land are subject to a carbon maintenance obligation, the carbon maintenance obligation **relates** to the project mentioned in whichever of subparagraph (1)(a)(i), (1)(b)(i) or (1)(c)(i) applies.
- (4) An activity may be specified under paragraph (2)(b) by reference to:
 - (a) the area or areas of land on which the activity may be carried out; or
 - (b) the manner in which the activity may be carried out; or
 - (c) the time or times at which the activity may be carried out; or

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- (d) the period or periods during which the activity may be carried out; or
 - (e) the person or persons who may carry out the activity.
- (5) Subsection (4) does not limit the ways in which an activity may be specified under paragraph (2)(b).
- (6) If the Regulator makes a declaration under subsection (2), the Regulator must take all reasonable steps to ensure that a copy of the declaration is given to:
 - (a) the project proponent for the project; and
 - (b) each person who holds an eligible interest in the area, or any of the areas, of land; and
 - (c) a person specified in the regulations or the legislative rules; and
 - (d) the relevant land registration official.
- (7) A failure to comply with subsection (6) does not affect the validity of a declaration under subsection (2).

Benchmark sequestration level

- (8) If an area or areas of land are subject to a carbon maintenance obligation that relates to a sequestration offsets project, the **benchmark sequestration level** is the number of tonnes of carbon that was sequestered in the relevant carbon pool on the area or areas when the declaration under subsection (2) was made in relation to the area or areas.

Obligations

- (9) If an area or areas of land are subject to a carbon maintenance obligation, a person must not engage in conduct that:
 - (a) results, or is likely to result, in a reduction below the benchmark sequestration level of the sequestration of carbon in the relevant carbon pool on the area or areas; and
 - (b) is not a permitted carbon activity.
- (10) If:

- (a) an area or areas of land are subject to a carbon maintenance obligation; and
- (b) there has been a reduction below the benchmark sequestration level of the sequestration of carbon in the relevant carbon pool on the area or areas;

the owner or occupier of the land must take all reasonable steps to ensure that the number of tonnes of carbon sequestered in the relevant carbon pool on the area or areas is not less than the benchmark storage level.

Ancillary contraventions

- (11) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (9) or (10); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (9) or (10); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (9) or (10); or
 - (d) conspire with others to effect a contravention of subsection (9) or (10).

Civil penalty provisions

- (12) Subsections (9), (10) and (11) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

Duration of declaration

- (13) A declaration under subsection (2) comes into force when a copy of the declaration is given to the project proponent for the project under subsection (6).
- (14) Unless sooner revoked, a declaration under subsection (2) ceases to be in force at whichever of the following times happens first:
 - (a) when the penalty payable under section 179 in respect of the non-compliance with the requirement referred to in

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subparagraph (1)(a)(v) or (b)(v) (including any late payment penalty payable under section 180 in relation to the section 179 penalty) is paid in full;

(b) if:

- (i) the notice referred to in subparagraph (1)(c)(ii) is given; and
- (ii) the notice required a person to relinquish a particular number of Australian carbon credit units; and
- (iii) the person did not comply with the requirement within 90 days after the notice was given;

when the penalty payable under section 179 in respect of the non-compliance with the requirement (including any late payment penalty payable under section 180 in relation to the section 179 penalty) is paid in full;

(c) if the relevant section 27 declaration has never been varied so as to add one or more project areas—the end of the period that:

- (i) begins on the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2; and
- (ii) is of the same duration as the permanence period for the project;

(d) if the relevant section 27 declaration has been varied so as to add one or more project areas—the end of the period that:

- (i) begins on the last occasion on which the declaration was so varied; and
- (ii) is of the same duration as the permanence period for the project.

Declaration is not a legislative instrument

- (15) A declaration made under subsection (2) is not a legislative instrument.

98 Variation or revocation of declaration of carbon maintenance obligation

Scope

- (1) This section applies if a declaration is in force under subsection 97(2) in relation to an area or areas of land.

Variation or revocation

- (2) The Regulator may, by writing, vary or revoke the declaration.
- (3) The Regulator may do so:
- (a) on the Regulator's own initiative; or
 - (b) on application made to the Regulator by a person.

Application

- (4) An application under paragraph (3)(b) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by the fee (if any) specified in the regulations or the legislative rules.
- (5) A fee specified under paragraph (4)(c) must not be such as to amount to taxation.

Notification of variation or revocation

- (6) If the Regulator varies or revokes the declaration, the Regulator must take all reasonable steps to ensure that a copy of the variation or revocation is given to:
- (a) the project proponent for the project; and
 - (b) each person who holds an eligible interest in the area, or any of the areas, of land; and
 - (c) a person specified in the regulations or the legislative rules; and
 - (d) the relevant land registration official.

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- (7) A failure to comply with subsection (6) does not affect the validity of a variation or revocation.

Refusal

- (8) If the Regulator decides to refuse to vary or revoke the declaration, the Regulator must give written notice of the decision to the applicant.

Variation or revocation is not a legislative instrument

- (9) A variation or revocation of the declaration is not a legislative instrument.

**99 Revocation of declaration of carbon maintenance obligation—
voluntary relinquishment of Australian carbon credit
units**

Scope

- (1) This section applies if:
- (a) an area or areas of land are subject to a carbon maintenance obligation; and
 - (b) in the case of a single area—the area is not, and is not part of, a project area for an eligible offsets project that is a sequestration offsets project; and
 - (c) in the case of 2 or more areas—none of the areas is, or is part of, a project area for an eligible offsets project that is a sequestration offsets project; and
 - (d) a person applies to the Regulator for the revocation of the relevant subsection 97(2) declaration; and
 - (e) before the application was made, the applicant or another person voluntarily relinquished a number of Australian carbon credit units in order to satisfy a condition for revocation of the declaration; and
 - (f) the number of relinquished units equals the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.

Revocation

- (2) The Regulator must, by writing, revoke the declaration.

Application

- (3) An application under paragraph (1)(d) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator.

Notification of revocation

- (4) If the Regulator revokes the declaration, the Regulator must take all reasonable steps to ensure that a copy of the revocation is given to:
- (a) the project proponent for the project; and
 - (b) each person who holds an eligible interest in the area, or any of the areas, of land; and
 - (c) a person specified in the regulations or the legislative rules; and
 - (d) the relevant land registration official.
- (5) A failure to comply with subsection (4) does not affect the validity of a variation or revocation.

Refusal

- (6) If the Regulator decides to refuse to revoke the declaration, the Regulator must give written notice of the decision to the applicant.

Revocation is not a legislative instrument

- (7) A revocation of the declaration is not a legislative instrument.

Division 3—Injunctions

100 Injunctions

Performance injunctions

- (1) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of subsection 97(9) or (10);
- the Federal Court may, on the application of the Regulator, grant an injunction requiring the person to do that act or thing.

Restraining injunctions

- (2) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of subsection 97(9) or (10), the Federal Court may, on the application of the Regulator, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

101 Interim injunctions

Grant of interim injunction

- (1) If an application is made to the Federal Court for an injunction under section 100, the Court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The Federal Court is not to require the Regulator, as a condition of granting an interim injunction, to give any undertakings as to damages.

102 Discharge etc. of injunctions

The Federal Court may discharge or vary an injunction granted under this Division.

103 Certain limits on granting injunctions not to apply

Performance injunctions

- (1) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing.

Restraining injunctions

- (2) The power of the Federal Court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that

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kind—whether or not the person has previously engaged in conduct of that kind.

104 Other powers of the Federal Court unaffected

The powers conferred on the Federal Court under this Division are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

Part 9—Methodology determinations

Division 1—Introduction

105 Simplified outline

The following is a simplified outline of this Part:

- The Minister may make or vary a methodology determination that applies to a specified kind of offsets project.

Before making or varying a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise on the proposed determination or variation.

- In making or varying a methodology determination, the Minister must have regard to:
 - (a) advice given by the Emissions Reduction Assurance Committee; and
 - (b) the offsets integrity standards; and
 - (c) certain other matters.

Division 2—Methodology determinations

Subdivision A—Making of methodology determinations

106 Methodology determinations

- (1) The Minister may, by legislative instrument, make a determination that:
- (a) is expressed to apply to a specified kind of offsets project; and
 - (b) sets out requirements that must be met for such a project to be an eligible offsets project; and
 - (c) provides that, if such a project is an eligible offsets project, the carbon dioxide equivalent net abatement amount for the project in relation to a reporting period for the project is taken, for the purposes of this Act, to be equal to the amount ascertained using a method specified in, or ascertained in accordance with, the determination.
- Note 1: For declarations of eligible offsets projects, see section 27.
- Note 2: See also subsection 27(4A) in relation to certain additionality requirements that may be specified in a methodology determination.
- Note 3: See also sections 69, 70 and 71 in relation to specifying a crediting period in a methodology determination.
- Note 4: See also paragraph 76(4)(e) in relation to specifying in a methodology determination the deadline for giving an offsets report.
- Note 5: See also subsection 77A(2) in relation to setting out in a methodology determination requirements relating to the division of an offsets project into 2 or more parts.
- (2) A determination under subsection (1) is to be known as a ***methodology determination***.
- (3) A methodology determination that applies to a particular kind of offsets project may provide that, if such a project is an eligible offsets project, the project proponent for the project is subject to any or all of the following requirements:

- (a) specified requirements to include specified information relating to the project in each offsets report about the project;
 - (b) specified requirements to notify one or more matters relating to the project to the Regulator;
 - (c) specified record-keeping requirements relating to the project;
 - (d) specified requirements to monitor the project.
- (4) In deciding whether to make a methodology determination, the Minister must have regard to the following:
 - (a) whether the determination complies with the offsets integrity standards;
 - (b) any advice that the Emissions Reduction Assurance Committee has given to the Minister under subsection 123A(2) in relation to the making of the determination;
 - (c) whether any adverse environmental, economic or social impacts are likely to arise from the carrying out of the kind of project to which the determination applies;
 - (d) such other matters (if any) as the Minister considers relevant.
- (4A) The Minister must not make a methodology determination unless a method specified in, or ascertained in accordance with, the determination in accordance with paragraph (1)(c) provides that carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project is eligible carbon abatement from the project.
- (4B) The Minister must not make a methodology determination if the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) that the determination does not comply with one or more of the offsets integrity standards.
- (7) Paragraph (1)(a) of this section does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

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- (8) A methodology determination 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.
- (9) Subsection (8) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (9A) A methodology determination may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

Advice given by the Emissions Reduction Assurance Committee

- (10) Before making a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should make the determination.

Note: The Emissions Reduction Assurance Committee must have regard to certain matters in giving advice to the Minister (see section 123A).

- (11) If the Minister decides:
 - (a) to make a methodology determination; or
 - (b) not to make a methodology determination;the Minister must:
 - (c) cause a copy of any advice given by the Emissions Reduction Assurance Committee under subsection 123A(2) in relation to the determination to be published on the Department's website; and
 - (d) do so as soon as practicable after making the decision.

Subdivision B—Variation of methodology determinations

114 Variation of methodology determinations

- (1) The Minister may, by legislative instrument, vary a methodology determination.

- (2) In deciding whether to vary a methodology determination, the Minister must have regard to the following:
- (a) whether the varied determination complies with the offsets integrity standards;
 - (b) any advice that the Emissions Reduction Assurance Committee has given to the Minister under subsection 123A(2) in relation to the varying of the determination;
 - (c) whether any adverse environmental, economic or social impacts are likely to arise from the carrying out of the kind of project to which the varied determination applies;
 - (d) such other matters (if any) as the Minister considers relevant.
- (2A) The Minister must not vary a methodology determination unless a method specified in, or ascertained in accordance with, the varied determination in accordance with paragraph 106(1)(c) provides that carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project is eligible carbon abatement from the project.
- (5) Subsection (1) of this section does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

Advice given by the Emissions Reduction Assurance Committee

- (6) Before varying a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should vary the determination.

Note 1: The Emissions Reduction Assurance Committee must have regard to certain matters in giving advice to the Minister (see section 123A).

Note 2: For variations of a minor nature, see subsection (9).

- (7) In deciding whether to vary a methodology determination, the Minister must have regard to the following:
- (a) any relevant advice given by the Emissions Reduction Assurance Committee under subsection 123A(2);

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- (b) such other matters (if any) as the Minister considers relevant.
- (7A) The Minister must not vary a methodology determination so as to extend the crediting periods for the eligible offsets projects covered by the determination unless:
 - (a) the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) or paragraph 255(hc) that the variation should be made; and
 - (b) the Emissions Reduction Assurance Committee has not previously advised the Minister under subsection 123A(2) or paragraph 255(hc) that the variation should not be made; and
 - (c) the determination has not previously been varied so as to extend the crediting periods.
- (7B) The Minister must not vary a methodology determination if the Emissions Reduction Assurance Committee has advised the Minister under subsection 123A(2) that the varied determination does not comply with one or more of the offsets integrity standards.
- (8) If the Minister decides:
 - (a) to vary a methodology determination; or
 - (b) not to vary a methodology determination;the Minister must:
 - (c) cause a copy of any advice given by the Emissions Reduction Assurance Committee under subsection 123A(2) in relation to the determination to be published on the Department's website; and
 - (d) do so as soon as practicable after making the decision.
- (9) Subsections (6), (7), (7B) and (8) do not apply to a variation if the variation is of a minor nature.

115 When variation takes effect

A variation of a methodology determination takes effect:

- (a) on the day on which the instrument varying the methodology determination is made; or

- (b) if a later day is specified in the instrument—on that later day.

Subdivision C—Duration of methodology determinations

122 Duration of methodology determinations

- (1) A methodology determination:
 - (a) comes into force:
 - (i) when it is made; or
 - (ii) if a later time is specified in the determination—at that later time; and
 - (b) unless sooner revoked, remains in force for:
 - (i) the period specified in the determination; or
 - (ii) if a longer period is specified in relation to the determination in a legislative instrument made by the Minister—that longer period.
- (2) Paragraph (1)(a) has effect subject to section 130.

Note: Section 130 deals with approval of the application of a specified methodology determination to a project with effect from the start of a reporting period.
- (4) If a methodology determination expires, this Act does not prevent the Minister from making a fresh methodology determination in the same terms as the expired determination.

Subdivision D—Revocation of methodology determinations

123 Revocation of methodology determinations

- (1) The Minister may, by legislative instrument, revoke a methodology determination.
- (2) Before revoking a methodology determination, the Minister must request the Emissions Reduction Assurance Committee to advise the Minister about whether the Minister should revoke the determination.

Section 123A

Note: The Emissions Reduction Assurance Committee must have regard to certain matters in giving advice to the Minister (see section 123A).

- (3) In deciding whether to revoke a methodology determination, the Minister must have regard to the following:
 - (a) whether the determination complies with the offsets integrity standards;
 - (b) any relevant advice given by the Emissions Reduction Assurance Committee under subsection 123A(2);
 - (c) such other matters (if any) as the Minister considers relevant.
- (4) Subsection (1) of this section does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.
- (5) If the Minister decides:
 - (a) to revoke a methodology determination; or
 - (b) not to revoke a methodology determination;the Minister must, as soon as practicable after making the decision, cause a copy of any advice given by the Emissions Reduction Assurance Committee under subsection 123A(2) in relation to the determination to be published on the Department's website.

Subdivision DA—Advice about making, varying or revoking methodology determinations

123A Advice by the Emissions Reduction Assurance Committee

Scope

- (1) This section applies if the Minister requests the Emissions Reduction Assurance Committee:
 - (a) under subsection 106(10), to give advice about whether the Minister should make a methodology determination; or
 - (b) under subsection 114(6), to give advice about whether the Minister should vary a methodology determination; or
 - (c) under subsection 123(2), to give advice about whether the Minister should revoke a methodology determination.

Section 123B

Committee to give advice

- (2) The Emissions Reduction Assurance Committee must give the requested advice to the Minister.

Note: The Committee must undertake public consultation before giving advice about making or varying a methodology determination (see section 123D).

- (3) If the requested advice relates to whether the Minister should make a methodology determination, the Emissions Reduction Assurance Committee must include in the advice the Committee's opinion on whether the proposed determination complies with the offsets integrity standards.
- (4) If the requested advice relates to whether the Minister should vary a methodology determination, the Emissions Reduction Assurance Committee must include in the advice the Committee's opinion on whether the determination as proposed to be varied complies with the offsets integrity standards.

Committee must have regard to certain matters

- (5) In giving the requested advice to the Minister, the Emissions Reduction Assurance Committee must have regard to the following:
- (a) the offsets integrity standards;
 - (b) any relevant matters specified in a direction in force under section 123B;
 - (c) any relevant advice given by the Regulator to the Committee.
- (6) Subsection (5) does not, by implication, limit the matters to which the Emissions Reduction Assurance Committee may have regard.

123B Additional matters for the Emissions Reduction Assurance Committee to take into account

The Minister may, by legislative instrument, direct the Emissions Reduction Assurance Committee to do any or all of the following:

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- (a) have regard to one or more specified matters in giving advice about the making of a methodology determination;
- (b) have regard to one or more specified matters in giving advice about the variation of a methodology determination;
- (c) have regard to one or more specified matters in giving advice about the revocation of a methodology determination.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

123C Advice about whether methodology determination deals with eligible carbon abatement

If:

- (a) an Emissions Reduction Assurance Committee member:
 - (i) is an SES employee in the Department; or
 - (ii) holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department; and
- (b) the member advises the Committee that:
 - (i) if the Minister were to make a proposed methodology determination, the determination would not comply with the offsets integrity standard set out in paragraph 133(1)(c); or
 - (ii) if the Minister were to make a particular variation of a methodology determination, the varied determination would not comply with the offsets integrity standard set out in paragraph 133(1)(c);

then, in giving relevant advice to the Minister under subsection 123A(2), the Emissions Reduction Assurance Committee is to assume that the determination or varied determination, as the case may be, would not comply with that offsets integrity standard.

Note: Paragraph 133(1)(c) is about ensuring that the method in a methodology determination relates to eligible carbon abatement.

**Subdivision DB—Consultation by the Emissions Reduction
Assurance Committee**

**123D Consultation by the Emissions Reduction Assurance
Committee**

- (1) The Emissions Reduction Assurance Committee must not advise the Minister to make or vary a methodology determination unless the Committee has first:
 - (a) published on the Department's website:
 - (i) a detailed outline of the proposed determination or variation, as the case may be; and
 - (ii) a notice inviting the public to make a submission to the Committee on the detailed outline by a specified time limit; and
 - (b) considered any submissions that were received within that time limit.
- (2) The time limit must be 28 days after the notice is published.
- (3) However, the time limit may be shorter than 28 days after the notice is published, so long as:
 - (a) the Emissions Reduction Assurance Committee considers that the time limit is appropriate in the circumstances; and
 - (b) the time limit is not shorter than 14 days after the notice is published.

Publication of submissions

- (4) The Emissions Reduction Assurance Committee must publish on the Department's website any submissions under subsection (1) received within the time limit referred to in subparagraph (1)(a)(ii).
- (5) However, the Emissions Reduction Assurance Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be

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expected to substantially prejudice the commercial interests of the person or another person.

- (6) A request under subsection (5) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Committee.

Subdivision E—Applicable methodology determination

124 Applicable methodology determination for a reporting period

For the purposes of this Act, if a methodology determination applies to an eligible offsets project throughout a reporting period for the project, the determination is the applicable methodology determination for the reporting period.

124A Modified meaning of *crediting period* for an emissions avoidance offsets project that has an extended accounting period

This Subdivision has effect, in relation to an emissions avoidance offsets project that has an extended accounting period that begins immediately after the end of a crediting period, as if a reference in this Subdivision (other than this section) to the crediting period were a reference to the period:

- (a) beginning at the start of the crediting period; and
- (b) ending at the end of the extended accounting period.

125 Original methodology determination continues to apply after expiry

Scope

- (1) This section applies if a methodology determination (the *original determination*) that covers an eligible offsets project expires, in accordance with section 122, at any time during a crediting period for the project.

Continuation

- (2) Despite the expiry:
 - (a) the original determination continues to apply to the project during the remainder of the crediting period as if the original determination had not expired; and
 - (b) no other methodology determination applies to the project during the remainder of the crediting period.
- (3) However, if the Regulator approves, under section 130, the application of another methodology determination to the project, with effect from a particular time, subsection (2) does not apply to the project during so much of the crediting period as occurs after that time.

126 Original methodology determination continues to apply after variation

Scope

- (1) This section applies if a methodology determination (the ***original determination***) that covers an eligible offsets project is varied, under section 114, at any time during a crediting period for the project.

Continuation

- (2) Despite the variation, the original determination continues to apply to the project during the remainder of the crediting period as if the original determination had not been varied.
- (3) However, if the Regulator approves, under section 130:
 - (a) the application of another methodology determination to the project, with effect from a particular time; or
 - (b) the application of the original determination as varied to the project, with effect from a particular time;subsection (2) does not apply to the project during so much of the crediting period as occurs after that time.

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127 Original methodology determination continues to apply after revocation

Scope

- (1) This section applies if a methodology determination (the ***original determination***) that covers an eligible offsets project is revoked, under section 123, at any time during a crediting period for the project.

Continuation

- (2) Despite the revocation:
 - (a) the original determination continues to apply to the project during the remainder of the crediting period as if the original determination had not been revoked; and
 - (b) no other methodology determination applies to the project during the remainder of the crediting period.
- (3) However, if the Regulator approves, under section 130, the application of another methodology determination to the project, with effect from a particular time, subsection (2) does not apply to the project during so much of the crediting period as occurs after that time.

128 Request to approve application of methodology determination to a project with effect from the start of a reporting period

- (1) During a reporting period for an eligible offsets project, the project proponent for the project may request the Regulator to approve the application of a specified methodology determination to the project with effect from the start of the reporting period.
- (2) A request must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the regulations or the legislative rules; and

- (d) be accompanied by such other documents (if any) as are specified in the regulations or the legislative rules; and
 - (e) be accompanied by the fee (if any) specified in the regulations or the legislative rules.
- (3) It is immaterial whether the end of the reporting period is known when the request is made.
 - (4) The approved form of request may provide for verification by statutory declaration of statements in requests.
 - (5) A fee specified under paragraph (2)(e) must not be such as to amount to taxation.

129 Further information

- (1) The Regulator may, by written notice given to a person who made a request, require the person to give the Regulator, within the period specified in the notice, further information in connection with the request.
- (2) If the person breaches the requirement, the Regulator may, by written notice given to the person:
 - (a) refuse to consider the request; or
 - (b) refuse to take any action, or any further action, in relation to the request.

130 Regulator may approve application of methodology determination to a project with effect from the start of a reporting period

Scope

- (1) This section applies if, during a reporting period for an eligible offsets project, a request under section 128 has been made for the approval of the application of a specified methodology determination to the project with effect from the start of the reporting period.

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Approval

- (2) After considering the request, the Regulator may, by writing, approve the application of the methodology determination to the project with effect from the start of the reporting period.
- (3) The Regulator must not give an approval under subsection (2) unless the Regulator is satisfied that the project is covered by the methodology determination.

Notification of approval etc.

- (4) As soon as practicable after giving an approval under subsection (2), the Regulator must give a copy of the approval to the person who made the request.
- (4A) As soon as practicable after giving an approval under subsection (2), the Regulator must:
 - (a) annotate the relevant section 27 declaration to include a reference to the application of the methodology determination to the project from the start of the reporting period; and
 - (b) give a copy of the annotated declaration to the project proponent for the project.

Refusal

- (5) If the Regulator decides to refuse to approve the application of the methodology determination to the project, the Regulator must give written notice of the decision to the person who made the request.

Approval is not a legislative instrument

- (6) An approval given under subsection (2) is not a legislative instrument.

Division 3—Offsets integrity standards

133 Offsets integrity standards

- (1) For the purposes of this Act, the *offsets integrity standards* are as follows:
- (a) the application of:
 - (i) the requirements set out in; and
 - (ii) the method specified in, or ascertained in accordance with;
a methodology determination, in relation to projects of the kind specified in the determination, should result in carbon abatement that is unlikely to occur in the ordinary course of events (disregarding the effect of this Act);
 - (b) to the extent to which a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) involves ascertaining any of the following:
 - (i) the removal of one or more greenhouse gases from the atmosphere;
 - (ii) the reduction of emissions of one or more greenhouse gases into the atmosphere;
 - (iii) the emission of one or more greenhouse gases into the atmosphere;
the removal, reduction or emission, as the case may be, should be:
 - (iv) measurable; and
 - (v) capable of being verified;
 - (c) a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) should provide that carbon abatement used in ascertaining the carbon dioxide equivalent net abatement amount for a project must be eligible carbon abatement from the project;

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- (d) a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) should be supported by clear and convincing evidence;
 - (e) a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) should provide that, in ascertaining the carbon dioxide equivalent net abatement amount for a project, there is to be a deduction of the carbon dioxide equivalent of any amounts of greenhouse gases that:
 - (i) are emitted as a direct consequence of carrying out the project; and
 - (ii) under the determination, are taken to be material amounts;
 - (g) to the extent to which a method specified in, or ascertained in accordance with, a methodology determination in accordance with paragraph 106(1)(c) involves an estimate, projection or assumption—the estimate, projection or assumption should be conservative;
 - (h) such other standards (if any) as are set out in the legislative rules.
- (2) Without limiting paragraph (1)(d), evidence mentioned in that paragraph may include relevant scientific results published in peer-reviewed literature.
- (3) Paragraph (1)(h) is not limited by the other paragraphs in subsection (1).

Conservative estimates, projections or assumptions

- (4) The Minister may, by legislative instrument, make a determination providing that a specified estimate, projection or assumption is taken to be conservative for the purposes of this section.

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

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- (5) The Minister may, by legislative instrument, make a determination providing that a specified estimate, projection or assumption is taken not to be conservative for the purposes of this section.

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

Part 10—Multiple project proponents

Division 1—Introduction

134 Simplified outline

The following is a simplified outline of this Part:

- If there are multiple project proponents for an offsets project, a reference in this Act to the project proponent is to be read as a reference to each of the project proponents.
- Multiple project proponents for an offsets project may nominate a nominee for the purposes of:
 - (a) the service of documents; and
 - (b) the taking of eligible voluntary actions (for example, the making of an application).
- If there are multiple project proponents for an offsets project, obligations are imposed on each of the proponents, but may be discharged by any of the proponents.

Division 2—References to project proponents

135 References to project proponents

If there are 2 or more persons (the *multiple project proponents*) who:

- (a) have joint responsibility for carrying out an offsets project; and
- (b) jointly have the legal right to carry out the project;

then:

- (c) for the purposes of this Act, each of the multiple project proponents is a project proponent for the project; and
- (d) a reference in:

- (i) this Act; or
- (ii) the regulations; or
- (iii) the legislative rules; or
- (iv) any other instrument under this Act;

to the project proponent for the offsets project is to be read as a reference to each of the multiple project proponents.

Division 3—Nominee of multiple project proponents

136 Nomination of nominee by multiple project proponents

Scope

- (1) This section applies to an offsets project if there are 2 or more project proponents (the ***multiple project proponents***) for the project.

Nomination

- (2) The multiple project proponents may, by joint written notice given to the Regulator, nominate one of them as being their ***nominee*** in relation to the offsets project.
- (3) The joint written notice must be in a form approved, in writing, by the Regulator.
- (4) A notice under subsection (2) may accompany an application under this Act, the regulations or the legislative rules. In this case, the nomination is taken to have been given immediately before the application was made.

Revocation of nomination

- (5) If:
- (a) a person has been nominated under subsection (2) in relation to an eligible offsets project; and
 - (b) one of the project proponents for the eligible offsets project, by written notice given to the Regulator, revokes the nomination;
- the nomination ceases to be in force.

Cessation of nomination—nominee ceases to be a project proponent

- (6) If:

- (a) a person has been nominated under subsection (2) in relation to an eligible offsets project; and
 - (b) the nominee ceases to be one of the project proponents for the eligible offsets project;
- the nomination ceases to be in force.

137 Service of documents on nominee

Scope

- (1) This section applies if there are 2 or more project proponents (the **multiple project proponents**) for an offsets project.

Service of documents

- (2) For the purposes of this Act, if:
 - (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (b) the nomination is in force; and
 - (c) a document relating to the eligible offsets project is required or permitted by this Act to be given to the project proponent; and
 - (d) the document is given to the nominee;the document is taken to have been given to each of the multiple project proponents.

138 Eligible voluntary action taken by nominee

Scope

- (1) This section applies if there are 2 or more project proponents (the **multiple project proponents**) for an offsets project.

Eligible voluntary action to be taken by nominee

- (2) If:
 - (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and

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- (b) the nomination is in force; and
 - (c) the nominee takes an eligible voluntary action; and
 - (d) the application, nomination, request or notice to which the eligible voluntary action relates is expressed to be made, withdrawn or given, as the case may be, on behalf of the multiple project proponents;
- this Act, the regulations and the legislative rules have effect as if:
- (e) the application, nomination, request or notice to which the eligible voluntary action relates were made, withdrawn or given, as the case may be, by the multiple project proponents jointly; and
 - (h) if the eligible voluntary action is the making of an application—a reference in this Act, the regulations or the legislative rules to the applicant were a reference to each of the multiple project proponents.
- (3) The multiple project proponents are not entitled to take an eligible voluntary action except in accordance with subsection (2).

**139 Unilateral revocation of declaration of eligible offsets project—
failure of multiple project proponents to nominate a
nominee**

- (1) The regulations or the legislative rules may make provision for and in relation to empowering the Regulator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations or legislative rules made for the purposes of subsection (1) must not empower the Regulator to revoke a declaration unless:
 - (a) there are 2 or more project proponents (the *multiple project proponents*) for the offsets project; and
 - (b) a declaration is in force under section 27 in relation to the project; and
 - (c) the multiple project proponents have nominated a person under subsection 136(2); and
 - (d) the nomination ceases to be in force; and

- (e) 90 days pass, and no new nomination under subsection 136(2) is made by the multiple project proponents.
- (3) Regulations or legislative rules made for the purposes of subsection (1) must require the Regulator to consult the multiple project proponents before deciding to revoke a declaration.

140 Designation of nominee account

Scope

- (1) This section applies if:
 - (a) there are 2 or more project proponents (the **multiple project proponents**) for an eligible offsets project; and
 - (b) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (c) the nomination is in force.

Request for nominee account

- (2) The nominee may:
 - (a) request the Regulator, under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, to open a Registry account in the name of the nominee; and
 - (b) request the Regulator to designate that account as the nominee account for the eligible offsets project.
- (3) A request under paragraph (2)(b) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the regulations or the legislative rules; and
 - (d) be accompanied by such other documents (if any) as are specified in the regulations or the legislative rules; and
 - (e) be accompanied by the fee (if any) specified in the regulations or the legislative rules.

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- (4) The approved form of request may provide for verification by statutory declaration of statements in requests.
- (5) A fee specified under paragraph (3)(e) must not be such as to amount to taxation.

Designation of nominee account

- (6) After considering a request under paragraph (2)(b), the Regulator may designate the Registry account as the **nominee account** for the eligible offsets project.

141 Issue of Australian carbon credit units to nominee account

Scope

- (1) This section applies if there are 2 or more project proponents (the **multiple project proponents**) for an eligible offsets project.

Application for issue of Australian carbon credit units

- (2) If:
 - (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (b) the nomination is in force; and
 - (c) a nominee account for the project is kept in the name of the nominee; and
 - (d) the nominee makes an application under section 12 for the issue of a certificate of entitlement in respect of the project for a reporting period;

paragraph 13(1)(c) does not apply to the application.

Note: Paragraph 13(1)(c) requires the application to set out the account number of a Registry account.

Issue of Australian carbon credit units

- (3) If:

- (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (b) the nomination is in force; and
 - (c) a nominee account for the project is kept in the name of the nominee; and
 - (d) apart from this subsection, the Regulator is required under section 11 to issue one or more Australian carbon credit units to the multiple project proponents in relation to the eligible offsets project;
- then:
- (e) the Regulator must comply with the requirement by issuing the units to the nominee and making an entry for the units in the nominee account; and
 - (f) subsections 11(5) and (6) do not apply to the issue of the units.
- (4) If:
- (a) no nomination made by the multiple project proponents under subsection 136(2) in relation to the project is in force; and
 - (b) apart from this subsection, the Regulator is required under section 11 to issue one or more Australian carbon credit units to the multiple project proponents in relation to the eligible offsets project;
- the Regulator must not issue the units.

142 Units held in nominee account

Scope

- (1) This section applies to a Registry account that has been designated as the nominee account for an eligible offsets project.

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Units held in account

- (2) Australian carbon credit units held in the nominee account are held on trust for the persons who are, for the time being, the project proponents for the project.

143 Instructions in relation to nominee account

Scope

- (1) This section applies to a Registry account that has been designated as the nominee account for an eligible offsets project.

Instructions by nominee

- (2) A person is not entitled to give instructions under:
- (a) this Act; or
 - (b) the *Australian National Registry of Emissions Units Act 2011*;
- to the Regulator in relation to the nominee account unless:
- (c) the account is kept in the name of the person; and
 - (d) the person has been nominated as a nominee under subsection 136(2) in relation to the project; and
 - (e) the nomination is in force.
- (3) If an instruction complies with subsection (2), the instruction is taken to have been given on behalf of the project proponents for the project.

144 Updating nominee account details on change of nominee

Scope

- (1) This section applies if:
- (a) there are 2 or more project proponents (the ***multiple project proponents***) for an eligible offsets project; and
 - (b) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and

- (c) a nominee account for the project is kept in the name of the nominee; and
- (d) the nomination ceases to be in force; and
- (e) a new nomination of a nominee (the ***new nominee***) is made under subsection 136(2).

Updating account details

- (2) As soon as practicable after receiving the new nomination, the Regulator must make the necessary alterations in the Registry to substitute the name of the new nominee for the name of the old nominee.

Division 4—Obligations of multiple project proponents

145 Obligations of multiple project proponents

Scope

- (1) This section applies if:
 - (a) there are 2 or more project proponents (the ***multiple project proponents***) for the eligible offsets project; and
 - (b) any of the following:
 - (i) this Act;
 - (ii) the regulations;
 - (iia) the legislative rules;
 - (iii) another instrument made under this Act;imposes an obligation on the project proponent for the project.

Obligations of project proponent

- (2) The obligation is imposed on each of the multiple project proponents, but may be discharged by any of the multiple project proponents.
- (3) The regulations or the legislative rules may exempt a specified obligation from the scope of subsection (2).

Part 11—Australian carbon credit units

Division 1—Introduction

146 Simplified outline

The following is a simplified outline of this Part:

- The Regulator may issue Australian carbon credit units.
- An Australian carbon credit unit is generally transferable.
- Entries may be made in Registry accounts for Australian carbon credit units.

Division 2—Issue of Australian carbon credit units

147 Issue of Australian carbon credit units

The Regulator may, on behalf of the Commonwealth, issue units, to be known as Australian carbon credit units.

148 How Australian carbon credit units are to be issued

- (1) The Regulator is to issue an Australian carbon credit unit to a person by making an entry for the unit in a Registry account kept by the person.
- (2) The Regulator must not issue an Australian carbon credit unit to a person unless the person has a Registry account.

149 Circumstances in which Australian carbon credit units may be issued

The Regulator must not issue an Australian carbon credit unit otherwise than in accordance with Part 2.

Division 3—Property in, and transfer of, Australian carbon credit units

150 An Australian carbon credit unit is personal property

An Australian carbon credit unit is personal property and, subject to sections 152 and 153, is transmissible by assignment, by will and by devolution by operation of law.

150A Ownership of Australian carbon credit unit

- (1) The registered holder of an Australian carbon credit unit:
 - (a) is the legal owner of the unit; and
 - (b) may, subject to this Act and the *Australian National Registry of Emissions Units Act 2011*, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.
- (2) Subsection (1) only protects a person who deals with the registered holder of the unit as a purchaser:
 - (a) in good faith for value; and
 - (b) without notice of any defect in the title of the registered holder.

151 Transfer of Australian carbon credit units

For the purposes of this Act, if there is an entry for an Australian carbon credit unit in a Registry account (the ***first Registry account***) kept by a person (the ***first person***):

- (a) a ***transfer*** of the unit from the first Registry account to a Registry account kept by another person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and
 - (ii) the making of an entry for the unit in the Registry account kept by the other person; and

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- (b) the *transfer* of the unit from the first Registry account to another Registry account kept by the first person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and
 - (ii) the making of an entry for the unit in the other Registry account kept by the first person.

152 Transmission of Australian carbon credit units by assignment

- (1) A transmission by assignment of an Australian carbon credit unit for which there is an entry in a Registry account is of no force until:
 - (a) the transferor, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the relevant Registry account kept by the transferor to a Registry account kept by the transferee; and
 - (b) the Regulator complies with that instruction.
- (2) An instruction under paragraph (1)(a) must set out:
 - (a) the account number of the transferor's Registry account; and
 - (b) the account number of the transferee's Registry account.
- (3) If the Regulator receives an instruction under paragraph (1)(a), the Regulator must comply with the instruction as soon as practicable after receiving it.
- (4) The Registry must set out a record of each instruction under paragraph (1)(a).
- (5) If the transferor is the Commonwealth, the Minister may give an instruction under subsection (1) on behalf of the transferor.

153 Transmission of Australian carbon credit units by operation of law etc.

Scope

- (1) This section applies if an Australian carbon credit unit for which there is an entry in a Registry account is transmitted from a person (the *transferor*) to another person (the *transferee*) by any lawful means other than by a transfer under section 152.

Effect of transmission

- (1A) The transmission is of no force until the Regulator transfers the Australian carbon credit unit under subsection (7) or (8).

Declaration of transmission

- (2) The transferee must, within 90 days after the transmission, give the Regulator:
- (a) a declaration of transmission; and
 - (b) such evidence of transmission as is specified in the regulations or the legislative rules.
- (3) A declaration of transmission must be made in accordance with the regulations or the legislative rules.
- (4) If the transferee does not already have a Registry account, the declaration of transmission must be accompanied by a request, under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, for the Regulator to open a Registry account in the name of the transferee.
- (5) If the Regulator is satisfied that special circumstances warrant the extension of the 90-day period mentioned in subsection (2), the Regulator may extend that period.
- (6) The Regulator may exercise the power conferred by subsection (5):
- (a) on written application being made to the Regulator by the transferee; or

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(b) on the Regulator's own initiative.

Transfer of unit—transferee already has a Registry account

- (7) If the transferee already has a Registry account, the Regulator must, as soon as practicable after receiving the declaration of transmission, transfer the unit from the relevant Registry account kept by the transferor to a Registry account kept by the transferee.

Transfer of unit—transferee does not have a Registry account

- (8) If:
- (a) the transferee does not already have a Registry account; and
 - (b) in accordance with the request under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, the Regulator has opened a Registry account in the name of the transferee;
- the Regulator must, as soon as practicable after opening the Registry account, transfer the unit from the relevant Registry account kept by the transferor to the Registry account kept by the transferee.

Record

- (9) If the Regulator transfers the unit under subsection (7) or (8), the Registry must set out a record of the declaration of transmission.

When the transferee is the Commonwealth

- (10) If the transferee is the Commonwealth, the Minister may give:
- (a) the declaration of transmission; and
 - (b) the evidence mentioned in paragraph (2)(b);
- on behalf of the transferee.

Notification

- (11) If:
- (a) the Regulator decides to:

- (i) extend the 90-day period mentioned in subsection (2);
or
 - (ii) refuse to extend the 90-day period mentioned in
subsection (2); and
 - (b) the Regulator made the decision in response to an
application;
- the Regulator must give written notice of the decision to the
applicant.

154 Outgoing international transfers of Australian carbon credit units

Scope

- (1) This section applies if:
 - (a) a person (the ***first person***) keeps a Registry account in which
there is an entry for an Australian carbon credit unit; and
 - (b) the first person, by electronic notice transmitted to the
Regulator, instructs the Regulator to transfer the unit from
the Registry account to:
 - (i) a foreign account kept by another person; or
 - (ii) a foreign account kept by the first person; and
 - (c) the instruction does not contravene:
 - (i) regulations or legislative rules made for the purposes of
section 155 of this Act; or
 - (ii) regulations made for the purposes of subsection 41(3) of
the *Australian National Registry of Emissions Units Act*
2011.
- (2) An instruction under subsection (1) must set out:
 - (a) the account number of the relevant Registry account kept by
the first person; and
 - (b) such other information as is specified in the regulations or the
legislative rules.

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Compliance with instruction

- (3) If the Regulator receives an instruction under subsection (1), the Regulator must take such steps as are required by the regulations or the legislative rules.
- (4) Regulations or legislative rules made for the purposes of subsection (3) may require the Regulator to remove the entry for the unit from the relevant Registry account kept by the first person.
- (5) Regulations or legislative rules made for the purposes of subsection (3) may require the Regulator to transfer an assigned amount unit from a Commonwealth holding account to a voluntary cancellation account.
- (6) If the Regulator takes steps under subsection (3) in relation to an instruction, the Registry must set out a record of the instruction.
- (7) If the first person is the Commonwealth, the Minister may give an instruction under subsection (1) on behalf of the first person.

155 Restrictions on outgoing international transfers of Australian carbon credit units

The regulations or the legislative rules may prevent, restrict or limit the transfer of Australian carbon credit units from a Registry account to a foreign account.

156 Transfer of Australian carbon credit units to another Registry account held by the transferor

Scope

- (1) This section applies if:
 - (a) a person keeps a Registry account (the ***first Registry account***) in which there is an entry for an Australian carbon credit unit; and
 - (b) the person, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the first

Registry account to another Registry account kept by the person; and

- (c) the instruction sets out:
- (i) the account number of the first Registry account; and
 - (ii) the account number of the other Registry account.

Compliance with instruction

- (2) If a person gives the Regulator an instruction under paragraph (1)(b), the Regulator must comply with the instruction as soon as practicable after receiving it.
- (3) The Registry must set out a record of the instruction under paragraph (1)(b).

157A Registration of equitable interests in relation to an Australian carbon credit unit

- (1) The regulations or the legislative rules may make provision for or in relation to the registration in the Registry of equitable interests in relation to Australian carbon credit units.
- (2) Subsection (1) does not apply to an equitable interest that is a security interest within the meaning of the *Personal Property Securities Act 2009*, and to which that Act applies.

158 Equitable interests in relation to an Australian carbon credit unit

- (1) This Act does not affect:
 - (a) the creation of; or
 - (b) any dealings with; or
 - (c) the enforcement of;equitable interests in relation to an Australian carbon credit unit.
- (2) Subsection (1) has effect subject to:
 - (a) section 50; and

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- (b) regulations or legislative rules made for the purposes of section 51; and
 - (c) section 142.
- (3) This section is enacted for the avoidance of doubt.

Part 12—Publication of information

Division 1—Introduction

159 Simplified outline

The following is a simplified outline of this Part:

- The Regulator must publish certain information about the operation of this Act.

Division 2—Information about units

160 Information about issue of Australian carbon credit units

As soon as practicable after Australian carbon credit units are issued to a person, the Regulator must publish on the Regulator's website:

- (a) the name of the person; and
- (b) the total number of Australian carbon credit units issued to the person.

161 Quarterly reports about issue of Australian carbon credit units

As soon as practicable after the end of each quarter, the Regulator must publish on the Regulator's website the total number of Australian carbon credit units issued during the quarter.

162 Publication of concise description of the characteristics of Australian carbon credit units

The Regulator must:

- (a) publish on the Regulator's website a statement setting out a concise description of the characteristics of Australian carbon credit units; and
- (b) keep that statement up-to-date.

Division 3—Information about units purchased by the Commonwealth

163 Information about carbon abatement purchasing processes

After the Regulator conducts a carbon abatement purchasing process, the Regulator may publish on the Regulator's website any or all of the following information:

- (a) when the process was conducted;
- (b) the weighted average price for eligible carbon credit units that the Commonwealth is purchasing as a result of the process;
- (c) such other summary information (if any) relating to the process as the Regulator considers appropriate;
- (d) such other statistics (if any) relating to the process as the Regulator considers appropriate.

163A Annual reports about purchases of eligible carbon credit units

As soon as practicable after the end of each financial year, the Regulator must publish on the Regulator's website:

- (a) the total amount of carbon abatement that will result from the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts entered into during the financial year; and
- (b) the total amount that the Commonwealth will be liable to pay for the purchase of eligible carbon credit units under carbon abatement contracts entered into during the financial year; and
- (c) the total number of eligible carbon credit units that were transferred to the Commonwealth during the financial year as a result of carbon abatement contracts; and
- (d) the total amount that the Commonwealth has paid during the financial year for the purchase of eligible carbon credit units under carbon abatement contracts; and

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- (e) such other summary information (if any) relating to the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts as the Regulator considers appropriate; and
- (f) such other statistics (if any) relating to the purchase of eligible carbon credit units by the Commonwealth under carbon abatement contracts as the Regulator considers appropriate.

Division 4—Information about relinquishment requirements

164 Information about relinquishment requirements

Scope

- (1) This section applies if, under this Act, a person is required, during a financial year, to relinquish a particular number of Australian carbon credit units.

Relinquishment requirement

- (2) The Regulator must publish on the Regulator's website:
 - (a) the name of the person; and
 - (b) details of the relinquishment requirement.
- (3) If any of the following paragraphs applies:
 - (a) the decision to require the person to relinquish a specified number of Australian carbon credit units is being reconsidered by the Regulator under section 242;
 - (b) the decision to require the person to relinquish a specified number of Australian carbon credit units has been affirmed or varied by the Regulator under section 242, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
 - (c) the decision to require the person to relinquish a specified number of Australian carbon credit units is the subject of an application for review by the Administrative Appeals Tribunal;the Regulator must:
 - (d) publish an appropriate annotation on the Regulator's website; and
 - (e) if paragraph (a) applies—when the Regulator notifies the applicant for reconsideration of the Regulator's decision on

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- the reconsideration, the Regulator must publish an appropriate annotation on the Regulator's website; and
- (f) if paragraph (b) or (c) applies—when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised, the Regulator must publish an appropriate annotation on the Regulator's website.

165 Information about unpaid administrative penalties

Scope

- (1) This section applies if:
- (a) under this Act, a person is required to relinquish a particular number of Australian carbon credit units; and
 - (b) during a financial year, an amount (the **penalty amount**) payable by the person under section 179 in relation to non-compliance with the relinquishment requirement remains unpaid after the time when the penalty amount became due for payment.

Penalty amount

- (2) The Regulator must publish on the Regulator's website:
- (a) the name of the person; and
 - (b) details of the unpaid penalty amount.

166 Information about number of relinquished units

Scope

- (1) This section applies if:
- (a) under this Act, a person is required to relinquish a particular number of Australian carbon credit units; and
 - (b) during a financial year, the person relinquishes one or more Australian carbon credit units in order to comply with the requirement.

Australian carbon credit units relinquished

- (2) As soon as practicable after receiving the relinquishment notice, the Regulator must publish on the Regulator's website:
- (a) the name of the person; and
 - (b) the total number of Australian carbon credit units relinquished.

Division 5—Emissions Reduction Fund Register

167 Emissions Reduction Fund Register

- (1) The Regulator must keep a register, to be known as the Emissions Reduction Fund Register.
- (2) The Emissions Reduction Fund Register is to be maintained by electronic means.
- (3) The Emissions Reduction Fund Register is to be made available for inspection on the Regulator's website.
- (4) The Regulator must ensure that the Emissions Reduction Fund Register is up-to-date.

168 Entries in the Register

- (1) The Emissions Reduction Fund Register must set out, for each eligible offsets project:
 - (a) the name of the project; and
 - (b) if the project is an area-based offsets project—the project area or project areas; and
 - (c) a description of the project; and
 - (d) whether the project is a joint implementation project; and
 - (e) the location of the project; and
 - (f) the project proponent for the project; and
 - (g) the name of the applicable methodology determination; and
 - (h) whether the relevant declaration under section 27 is subject to a condition that all relevant regulatory approvals must be obtained before the end of the first reporting period for the project; and
 - (ha) whether the relevant declaration under section 27 is subject to a condition mentioned in subsection 28A(2); and
 - (i) if the project is a sequestration offsets project:

- (i) whether the project is a 100-year permanence period project or a 25-year permanence period project; and
 - (ii) when the permanence period for the project will end; and
- (ja) if:
 - (i) the project is an area-based offsets project; and
 - (ii) the project area, or any of the project areas, is covered by a regional natural resource management plan;whether the project is consistent with the plan; and
- (k) if any Australian carbon credit units have been issued in relation to the project in accordance with Part 2:
 - (i) the total number of units so issued; and
 - (ii) the financial year, or each of the financial years, in which those units were so issued; and
 - (iii) the name of the person, or each of the persons, to whom those units have been issued; and
- (m) if any Australian carbon credit units have been relinquished in order to comply with a requirement under Part 7 in relation to the project—the total number of units so relinquished; and
- (n) if the project is a sequestration offsets project, and the project area or project areas are to any extent subject to a carbon maintenance obligation:
 - (i) a statement to the effect that the project area or project areas are, to a specified extent, subject to a carbon maintenance obligation; and
 - (ii) the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2; and
- (o) if:
 - (i) the project proponent for the project has requested the Regulator that particular information about the environmental benefits, or community benefits, of the project be set out in the Emissions Reduction Fund Register; and
 - (ii) the request has not been withdrawn; and

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- (iii) the requested information meets the requirements specified in the regulations or the legislative rules; the requested information; and
 - (p) if the project is a joint implementation project—such other information relating to the project as is specified in the regulations or the legislative rules; and
 - (q) such other information (if any) relating to the project as the Regulator considers appropriate.
- (2) Paragraph (1)(b) has effect subject to section 169.
- (2A) For the purposes of subparagraph (1)(i)(ii) of this section, the permanence period for a project ends at the last time when a notice could be given under subsection 89(2) in relation to the project if it were assumed that the requirements of paragraphs 89(1)(b) and (c) had been met.
- (3) If one or more areas of land that were formerly a project area or project areas of an eligible offsets project are to any extent subject to a carbon maintenance obligation, the Emissions Reduction Fund Register must:
 - (a) set out a statement to the effect that the area or areas are, to a specified extent, subject to a carbon maintenance obligation; and
 - (b) identify the area or areas of land; and
 - (c) set out the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) Regulations or legislative rules made for the purposes of paragraph (1)(p) must be consistent with the Kyoto rules.

Carbon abatement contracts

- (5) The Emissions Reduction Fund Register must set out, for each carbon abatement contract that has been entered into:
 - (a) the name of the carbon abatement contractor; and
 - (b) the duration of the contract; and

- (c) the name of the eligible offsets project for which the carbon abatement contractor is a project proponent; and
- (d) the number of eligible carbon credit units that the carbon abatement contractor has contracted to sell to the Commonwealth under the contract; and
- (e) the number of eligible carbon credit units that the carbon abatement contractor has sold to the Commonwealth under the contract.

169 Requests for information about project area not to be set out in the Register

- (1) The Emissions Reduction Fund Register must not set out the project area or project areas for an eligible offsets project that is an area-based offsets project if:
 - (a) the project proponent for the project has requested the Regulator not to set out the project area or project areas in the Emissions Reduction Fund Register; and
 - (b) the Regulator is satisfied that:
 - (i) the setting out of the project area or project areas could reasonably be expected to substantially prejudice the commercial interests of the project proponent or another person; and
 - (ii) the prejudice outweighs the public interest in the setting out of the project area or project areas.
- (2) A request under subsection (1) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator.
- (3) The Regulator must take all reasonable steps to ensure that a decision is made on the request within 30 days after the request was made.
- (4) If the Regulator decides to refuse the request, the Regulator must give written notice of the decision to the project proponent.

Part 13—Fraudulent conduct

170 Simplified outline

The following is a simplified outline of this Part:

- If a person is convicted of an offence relating to fraudulent conduct, and the issue of Australian carbon credit units is attributable to the commission of the offence, a court may order the person to relinquish a specified number of Australian carbon credit units.

171 Units issued as a result of fraudulent conduct—court may order relinquishment

Scope

- (1) This section applies if:
- (a) one or more Australian carbon 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.

Note: For *appropriate court*, see subsection (8).

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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 Australian carbon credit units not exceeding the number of Australian carbon 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 179 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 175 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 Australian carbon credit units; or
 - (b) the person is not the registered holder of the number of Australian carbon credit units required to be relinquished.

Conviction

- (6) It is immaterial whether the conviction occurred before, at or after the commencement of this section.

Copy of order

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

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Appropriate court

- (8) For the purposes of this section, each of the following courts is an ***appropriate court***:
- (a) the court that convicted the person of the offence;
 - (b) the Federal Court;
 - (c) the Supreme Court of a State or Territory.

Spent convictions

- (9) 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).

Part 15—Relinquishment of Australian carbon credit units

Division 1—Introduction

174 Simplified outline

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Regulator, relinquish any or all of those units.
- An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act.

Note 1: A person may voluntarily relinquish Australian carbon credit units in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project.

Note 2: A person may be required to relinquish Australian carbon credit units under Part 7.

Division 2—How Australian carbon credit units are relinquished

175 How Australian carbon credit units are relinquished

- (1) If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Regulator, relinquish any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the Australian carbon credit unit or units that are being relinquished; and
 - (b) if the Australian carbon credit unit or units are being relinquished in order to comply with a requirement under Part 7—specify the requirement to which the relinquishment relates; and
 - (c) if the Australian carbon credit unit or units are being voluntarily relinquished in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project—set out a statement to that effect; and
 - (d) if the Australian carbon credit unit or units are being voluntarily relinquished in order to satisfy a condition for revocation of a subsection 97(2) declaration—set out a statement to that effect; and
 - (e) if the Australian carbon credit unit or units are being relinquished in order to comply with an order under subsection 171(2) (fraudulent conduct)—specify the order to which the relinquishment relates; and
 - (f) 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 Australian carbon credit unit or units that are being relinquished.
- (3) If:
 - (a) an Australian carbon credit unit is relinquished by a person in order to comply with an order under subsection 171(2); and

- (b) the order was made because the person was convicted by a court of an offence that relates to Part 2;
- then:
 - (c) the unit is cancelled; and
 - (d) 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) an Australian carbon credit unit is relinquished by a person in order to comply with an order under subsection 171(2); and
 - (b) the order was made because the person was convicted by a court of an offence that does not relate to Part 2;
- then:
 - (c) the Regulator must transfer the unit from the person's Registry account in which there is an entry for the unit to the Commonwealth relinquished units account; and
 - (d) when the unit is transferred to the Commonwealth relinquished units account, property in the unit is transferred to the Commonwealth.
- (5) If:
 - (a) an Australian carbon credit unit is relinquished by a person in order to comply with a requirement under Part 7; or
 - (b) an Australian carbon credit unit is voluntarily relinquished in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; or
 - (c) an Australian carbon credit unit is voluntarily relinquished in order to satisfy a condition for revocation of a subsection 97(2) declaration;
- then:
 - (d) the unit is cancelled; and
 - (e) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.

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

176 Deemed relinquishment

Scope

- (1) This section applies if:
- (a) under this Act, a person is subject to a requirement to relinquish a particular number of Australian carbon credit units (the **relinquishment number**); and
 - (b) under section 11, the Regulator is required to issue to the person a particular number of Australian carbon credit units (the **issue number**).

Deemed relinquishment

- (2) If the issue number exceeds the relinquishment number:
- (a) the person is taken, immediately after the issue of the units mentioned in paragraph (1)(b) of this section, to have, by electronic notice transmitted to the Regulator under subsection 175(1), relinquished a number of those units equal to the relinquishment number; and
 - (b) that notice is taken to have specified, as the units that are being relinquished, such units as are determined by the Regulator; and
 - (c) that notice is taken to have specified the requirement mentioned in paragraph (1)(a) of this section as the requirement to which the relinquishment relates.
- (3) If the relinquishment number equals or exceeds the issue number:
- (a) the person is taken, immediately after the issue of the units mentioned in paragraph (1)(b) of this section, to have, by electronic notice transmitted to the Regulator under subsection 175(1), relinquished all of the units mentioned in paragraph (1)(b) of this section; and

- (b) that notice is taken to have specified, as the units that are being relinquished, all of the units mentioned in paragraph (1)(b); and
- (c) that notice is taken to have specified the requirement mentioned in paragraph (1)(a) of this section as the requirement to which the relinquishment relates.

Division 3—Compliance with relinquishment requirements

179 Compliance with relinquishment requirements

Scope

- (1) This section applies if, under this Act:
- (a) a person is required to relinquish a particular number of Australian carbon credit units; and
 - (b) the person is required to do so by a particular time (the ***compliance deadline***).

No units relinquished

- (2) If, by the compliance deadline, the person has not relinquished any Australian carbon credit 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:

$$\begin{array}{l} \text{Number of units} \\ \text{required to be relinquished} \end{array} \times \text{Prescribed amount}$$

where:

prescribed amount means the greater of the following amounts:

- (a) \$20;
- (b) 200% of the market value of an Australian carbon 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 Australian carbon credit units in order to comply with the requirement; and
 - (b) the number of relinquished 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:

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

where:

prescribed amount means the greater of the following amounts:

- (a) \$20;
- (b) 200% of the market value of an Australian carbon credit unit as at the compliance deadline.

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 Australian carbon credit units; or
 - (b) the person is not the registered holder of the number of Australian carbon credit units required to be relinquished.

Market value

- (6) The regulations may provide that, for the purposes of this section, the **market value** of an Australian carbon credit unit is to be ascertained in accordance with the regulations.
- (7) The legislative rules may provide that, for the purposes of this section, the **market value** of an Australian carbon credit unit is to be ascertained in accordance with the legislative rules.

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180 Late payment penalty

Penalty

- (1) If an amount payable by a person under section 179 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 regulations or the legislative 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:
- (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.

181 Recovery of penalties

An amount payable under section 179 or 180:

- (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.

182 Set-off

If:

- (a) an amount (the **first amount**) is payable under section 179 or 180 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 regulations or the legislative 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.

183 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 179;

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- (b) an amount payable under section 180.

Note: For appropriation, see section 28 of the *Financial Management and Accountability Act 1997*.

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.
- (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).

Part 16—Information-gathering powers

184 Simplified outline

The following is a simplified outline of this Part:

- The Regulator may obtain information or documents.

185 Regulator may obtain information or documents

Scope

- (1) This section applies to a person if the Regulator believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Act or the associated provisions.

Requirement

- (2) The Regulator may, by written notice given to the person, require the person:
 - (a) to give to the Regulator, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the Regulator, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Regulator, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

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Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (4); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (4); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (4); or
 - (d) conspire with others to effect a contravention of subsection (4).

Civil penalty provisions

- (6) Subsections (4) and (5) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

No limitation

- (7) This section is not limited by any other provision of this Act that relates to the powers of the Regulator to obtain information or documents.

186 Copying documents—compensation

A person is entitled to be paid by the Regulator, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 185(2)(c).

187 Copies of documents

- (1) The Regulator may:
- (a) inspect a document or copy produced under subsection 185(2); and
 - (b) make and retain copies of, or take and retain extracts from, such a document.

- (2) The Regulator may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 185(2)(c).

188 Regulator may retain documents

- (1) The Regulator may take, and retain for as long as is necessary, possession of a document produced under subsection 185(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Regulator to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Regulator must, at such times and places as the Regulator thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

189 Self-incrimination

- (1) A person is not excused from giving information or producing a document under section 185 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the information given or the document produced; or
 - (b) giving the information or producing the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;is not admissible in evidence against the individual:
 - (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 179 or 180); or

Section 189

- (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

Part 17—Record-keeping and project monitoring requirements

Division 1—Introduction

190 Simplified outline

The following is a simplified outline of this Part:

- The regulations or the legislative rules may require a person to:
 - (a) make a record of information; and
 - (b) retain the record.
- A person is subject to record-keeping requirements in relation to the preparation of an offsets report.
- A project proponent must comply with record-keeping and project monitoring requirements imposed by a methodology determination.

Division 2—Record-keeping requirements

191 Record-keeping requirements—general

- (1) The regulations or the legislative rules may require a person to:
 - (a) make a record of specified information, where the information is relevant to this Act; and
 - (b) retain:
 - (i) the record; or
 - (ii) a copy of the record;for 7 years after the making of the record.
- (2) If a person is subject to a requirement under regulations or legislative rules made for the purposes of subsection (1), the person must comply with that requirement.

Ancillary contraventions

- (3) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

Other provisions do not limit this section

- (5) This section is not limited by any other provision of this Act that relates to the keeping or retention of records.

192 Record-keeping requirements—preparation of offsets report

Scope

- (1) This section applies if a person:
- (a) made a record of particular information; and
 - (b) used the information to prepare an offsets report.

Record-keeping requirements

- (2) The regulations or the legislative rules may require the person to retain:
- (a) the record; or
 - (b) a copy of the record;
- for 7 years after the offsets report was given to the Regulator.
- (3) If a person is subject to a requirement under regulations or legislative rules made for the purposes of subsection (2), the person must comply with that requirement.

Ancillary contraventions

- (4) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (3); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (3); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (3); or
 - (d) conspire with others to effect a contravention of subsection (3).

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Civil penalty provisions

- (5) Subsections (3) and (4) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

193 Record-keeping requirements—methodology determinations

Scope

- (1) This section applies if:
- (a) a person is the project proponent for an eligible offsets project; and
 - (b) under the applicable methodology determination, the person is subject to a record-keeping requirement relating to the project.

Record-keeping requirement

- (2) The person must comply with the requirement.

Ancillary contraventions

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

Division 3—Project monitoring requirements

194 Project monitoring requirements—methodology determinations

Scope

- (1) This section applies if:
- (a) a person is the project proponent for an eligible offsets project; and
 - (b) under the applicable methodology determination, the person is subject to a requirement to monitor the project.

Project monitoring requirement

- (2) The person must comply with the requirement.

Ancillary contraventions

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

- (4) Subsections (2) and (3) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

Part 18—Monitoring powers

Division 1—Simplified outline

195 Simplified outline

The following is a simplified outline of this Part:

- An inspector may enter premises for the purpose of:
 - (a) determining whether this Act or the associated provisions have been complied with; or
 - (b) substantiating information provided under this Act or the associated provisions.
- Entry must be with the consent of the occupier of the premises or under a monitoring warrant.
- An inspector who enters premises may exercise monitoring powers. The inspector may be assisted by other persons if that assistance is necessary and reasonable.
- The occupier of the premises has certain rights and responsibilities.

Division 2—Appointment of inspectors and issue of identity cards

196 Appointment of inspectors

- (1) The Regulator may, in writing, appoint:
 - (a) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an SES employee or acting SES employee; or
 - (aa) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 1 or 2 position or an equivalent position; or
 - (b) a member or special member of the Australian Federal Police;as an inspector for the purposes of this Act.
- (2) The Regulator must not appoint a person as an inspector unless the Regulator is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.
- (3) An inspector must, in exercising powers as an inspector, comply with any directions of the Regulator.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

197 Identity cards

- (1) The Regulator must issue an identity card to an inspector.

Form of identity card

- (2) The identity card must:
 - (a) be in the form prescribed by the regulations or the legislative rules; and

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- (b) contain a recent photograph of the inspector.

Offence

- (3) A person commits an offence if:
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an inspector; and
 - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Regulator.

Penalty: 1 penalty unit.

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

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

Defence—card lost or destroyed

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

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

Inspector must carry card

- (6) An inspector must carry his or her identity card at all times when exercising powers as an inspector.

Division 3—Powers of inspectors

Subdivision A—Monitoring powers

198 Inspector may enter premises by consent or under a warrant

- (1) For the purpose of:
 - (a) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (b) substantiating information provided under this Act or the associated provisions;an inspector may:
 - (c) enter any premises; and
 - (d) exercise the monitoring powers set out in section 199.
- (2) However, an inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 203.

199 Monitoring powers of inspectors

- (1) The following are the ***monitoring powers*** that an inspector may exercise in relation to premises under section 198:
 - (a) the power to search the premises and any thing on the premises;
 - (b) the power to examine any activity conducted on the premises;
 - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;

Section 199

- (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
- (e) the power to inspect any document on the premises;
- (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 inspector requires for the purpose of exercising powers in relation to the premises;
- (h) the powers set out in subsections (2), (3) and (5).

Operating electronic equipment

- (2) The monitoring powers include the power to operate electronic equipment on the premises to see whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;contains information that is relevant to:
 - (c) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (d) substantiating information provided under this Act or the associated provisions.
- (3) The monitoring powers 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 electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;
 - (b) the power to operate electronic equipment on 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 on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;
- and remove the disk, tape or other storage device from the premises.
- (4) An inspector may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Securing things if entry to premises is under a monitoring warrant

- (5) If entry to the premises is under a monitoring warrant, the monitoring powers include the power to secure a thing for a period not exceeding 24 hours if:
 - (a) the thing is found during the exercise of monitoring powers on the premises; and
 - (b) an inspector believes on reasonable grounds that:
 - (i) the thing affords evidence of the commission of an offence against this Act or of an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; and
 - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
 - (iii) the circumstances are serious and urgent.
- (6) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

Section 200

- (8) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24 hour period:
 - (a) may be extended more than once; and
 - (b) must not be extended more than 3 times.

200 Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 198 and in exercising monitoring powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

Powers of a person assisting the inspector

- (2) A person assisting the inspector may:
 - (a) enter the premises; and
 - (b) exercise monitoring powers in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

Subdivision B—Powers of inspectors to ask questions and seek production of documents

201 Inspector may ask questions and seek production of documents

Entry with consent

- (1) If an inspector is authorised to enter premises because the occupier of the premises consented to the entry, the inspector may ask the occupier to:
 - (a) answer any questions relating to the operation of this Act or the associated provisions that are put by the inspector; and
 - (b) produce any document relating to the operation of this Act or the associated provisions that is requested by the inspector.

Entry under a monitoring warrant

- (2) If an inspector is authorised to enter premises by a monitoring warrant, the inspector may require any person on the premises to:
 - (a) answer any questions relating to the operation of this Act or the associated provisions that are put by the inspector; and
 - (b) produce any document relating to the operation of this Act or the associated provisions that is requested by the inspector.

Offence

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

Penalty: 30 penalty units.

202 Self-incrimination

- (1) A person is not excused from giving an answer or producing a document under section 201 on the ground that the answer or the

Section 202

production of the document might tend to incriminate the person or expose the person to a penalty.

(2) However, in the case of an individual:

- (a) the answer given or the document produced; or
- (b) giving the answer or producing the document; or
- (c) any information, document or thing obtained as a direct or indirect consequence of giving the answer or producing the document;

is not admissible in evidence against the individual:

- (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 179 or 180); or
- (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

Division 4—Obligations and incidental powers of inspectors

203 Consent

- (1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 198(2)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

204 Announcement before entry under warrant

An inspector must, before entering premises under a monitoring warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
- (c) give any person at the premises an opportunity to allow entry to the premises.

Section 205

205 Inspector to be in possession of warrant

If a monitoring warrant is being executed in relation to premises, an inspector executing the warrant must be in possession of the warrant or a copy of the warrant.

206 Details of warrant etc. to be given to occupier

If:

- (a) a monitoring warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- an inspector executing the warrant must, as soon as practicable:
- (c) make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it); and
 - (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 5.

207 Expert assistance to operate electronic equipment

- (1) This section applies to premises to which a monitoring warrant relates.

Securing equipment

- (2) If an inspector believes on reasonable grounds that:
 - (a) there is on the premises information that is relevant to:
 - (i) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (ii) substantiating information provided under this Act or the associated provisions;and 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 information 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 other means.
- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

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

Extensions

- (5) If an inspector believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (6) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24 hour period:
- (a) may be extended more than once; and
 - (b) must not be extended more than 3 times.

Section 208

208 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in this Part:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal 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 and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:

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

Division 5—Occupier's rights and responsibilities

209 Occupier entitled to observe execution of warrant

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

210 Occupier to provide inspector with facilities and assistance

- (1) The occupier of premises to which a monitoring warrant relates, or another person who apparently represents the occupier, must provide:
 - (a) an inspector executing the warrant; and
 - (b) any person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
 - (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty: 30 penalty units.

Division 6—Monitoring warrants

211 Monitoring warrants

Application for warrant

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

Issue of warrant

- (2) 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 inspectors should have access to the premises for the purpose of:
 - (a) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (b) substantiating information provided under this Act or the associated provisions.
- (3) However, the magistrate must not issue the warrant unless the inspector 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.

Content of warrant

- (4) The warrant must:
 - (a) describe the premises to which the warrant relates; and
 - (b) state that the warrant is issued under this section; and
 - (c) state that the warrant is issued for the purpose of:
 - (i) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (ii) substantiating information provided under this Act or the associated provisions; and

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- (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in Divisions 3 and 4 in relation to the premises; and
- (e) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

Division 7—Powers of magistrates

212 Powers of magistrates

Powers conferred personally

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

Powers need not be accepted

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

Protection and immunity

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if he or she were exercising the power:
- (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

Part 19—Audits

Division 1—Introduction

213 Simplified outline

The following is a simplified outline of this Part:

- The Regulator may require audits of one or more aspects of a person's compliance with this Act and the associated provisions to be carried out.

Division 2—Audits

214 Compliance audits

Scope

- (1) This section applies if:
- (a) a person is, or has been, the project proponent for an eligible offsets project; and
 - (b) 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.

Audit

- (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.

Note: For the conduct of an audit under this section, see section 75 of the *National Greenhouse and Energy Reporting Act 2007*.

- (3) The notice must specify:
-

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- (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) A person must provide the audit team leader, and any persons assisting the audit team leader, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.
- (5) If the Regulator gives a person written notice under subsection (2), the person must comply with the requirements of the notice.

Ancillary contraventions

- (6) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (4) or (5); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (4) or (5); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (4) or (5); or
 - (d) conspire with others to effect a contravention of subsection (4) or (5).

Civil penalty provisions

- (7) Subsections (4), (5) and (6) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

Reimbursement

- (8) If:
 - (a) the Regulator gives a person a notice under subsection (2); and
 - (b) in complying with that notice, the person arranges for an audit team leader to carry out an audit on one or more aspects

Section 215

- of the person's compliance with this Act or the associated provisions; and
- (c) the audit report does not indicate that there is evidence of non-compliance by the person with this Act or the associated provisions; and
 - (d) the person requests the Regulator to reimburse the person for reasonable costs incurred by the person in complying with the notice; and
 - (e) the Regulator is satisfied that the person would suffer financial hardship if the person were not reimbursed for those costs;
- the Regulator may, on behalf of the Commonwealth, reimburse the person for those costs.
- (9) A request under paragraph (8)(d) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) be accompanied by such information as is specified in the regulations or the legislative rules; and
 - (d) be accompanied by such documents (if any) as are specified in the regulations or the legislative rules.
 - (10) The approved form of request may provide for verification by statutory declaration of statements in requests.

215 Other audits

Audit

- (1) If a person is, or has been, the project proponent for an eligible offsets project, the Regulator may appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of the person's compliance with one or more aspects of this Act or the associated provisions.
- (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.

Note: For the conduct of an audit under this section, see section 75 of the *National Greenhouse and Energy Reporting Act 2007*.

- (3) The person must provide the audit team leader, and any persons assisting the audit team leader, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Ancillary contraventions

- (4) A person must not:
 - (a) aid, abet, counsel or procure a contravention of subsection (3); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (3); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (3); or
 - (d) conspire with others to effect a contravention of subsection (3).

Civil penalty provisions

- (5) Subsections (3) and (4) are ***civil penalty provisions***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

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Part 20—Liability of executive officers of bodies corporate

216 Simplified outline

The following is a simplified outline of this Part:

- If a body corporate contravenes a civil penalty provision, and an executive officer of the body corporate was involved in the contravention, the officer will contravene a civil penalty provision.

217 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.
- (2) 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.

- (3) 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; that the conduct merits the imposition of a pecuniary penalty.

Civil penalty provision

- (4) Subsection (1) is a ***civil penalty provision***.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

218 Reasonable steps to prevent contravention

- (1) For the purposes of section 217, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
- (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 civil penalty provisions;
 - (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 civil penalty provisions 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 limit section 217.

Part 21—Civil penalty orders

219 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

220 References to Court

In this Part:

Court means:

- (a) the Federal Court; or
- (b) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

221 Civil penalty orders

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a ***civil penalty order***.

Determining amount of pecuniary penalty

- (3) 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

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- (d) whether the person has previously been found by a 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.
- (4) The pecuniary penalty payable under subsection (1) by a body corporate must not exceed 10,000 penalty units for each contravention.
- (5) The pecuniary penalty payable under subsection (1) by a person other than a body corporate must not exceed 2,000 penalty units for each contravention.

Civil enforcement of penalty

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

222 Who may apply for a civil penalty order

- (1) Only the Regulator may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

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223 Two or more proceedings may be heard together

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

224 Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

225 Civil evidence and procedure rules for civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

226 Civil proceedings after criminal proceedings

The Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

227 Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings are 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.

228 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 civil penalty order has been made against the person.

229 Evidence given in proceedings for a civil penalty order 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:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil 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 a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

230 Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
 - (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
 - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

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- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

231 State of mind

Scope

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of any of the following civil penalty provisions:
 - (a) subsection 76(1);
 - (b) subsection 78(2);
 - (c) subsection 79(2);
 - (d) subsection 80(2);
 - (e) subsection 81(2);
 - (f) subsection 82(2);
 - (g) subsection 82(3);
 - (h) subsection 83(2);
 - (i) subsection 84(2);
 - (j) subsection 85(5);
 - (k) subsection 97(9);
 - (l) subsection 97(10);
 - (m) subsection 185(4);
 - (n) subsection 191(2);
 - (o) subsection 192(3);
 - (p) subsection 193(2);
 - (q) subsection 194(2);
 - (r) subsection 214(4);
 - (s) subsection 214(5);

(t) subsection 215(3).

State of mind

- (2) In the proceedings, it is not necessary to prove:
- (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (3) Subsection (2) does not affect the operation of section 230.

232 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) A person who contravenes any of the following civil penalty provisions:
- (a) subsection 76(1);
 - (b) subsection 78(2);
 - (c) subsection 79(2);
 - (d) subsection 80(2);
 - (e) subsection 81(2);
 - (f) subsection 82(2);
 - (g) subsection 82(3);
 - (h) subsection 83(2);
 - (i) subsection 84(2);
 - (j) subsection 85(5);
 - (k) subsection 185(4);
 - (l) subsection 193(2);
 - (m) subsection 194(2);

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- (n) subsection 214(4);
 - (o) subsection 214(5);
- commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.
- (3) The pecuniary penalty payable under subsection 221(1) for such a separate contravention in respect of a particular day must not exceed:
 - (a) in the case of a contravention of subsection 185(4)—10% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted; or
 - (b) otherwise—5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted.

Part 22—Offences relating to administrative penalties

233 Simplified outline

The following is a simplified outline of this Part:

- A person must not enter into a scheme:
 - (a) with the intention, knowledge or belief that the scheme will secure or achieve the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act; or
 - (b) if it would be reasonable to conclude that the person entered into the scheme for the sole or dominant purpose of securing or achieving the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act.

234 Scheme to avoid existing liability to pay administrative penalty

Intention

- (1) A person commits an offence if:
 - (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
 - (i) will be unable; or

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- (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;
- having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (1); or
 - (b) a party to the scheme.

Knowledge or belief

- (3) A person commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (3); or
 - (b) a party to the scheme.

Objective purpose

- (5) A person (the **first person**) commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) at or after the time when the penalty became due and payable, the first person entered into a scheme; and
 - (c) having regard to:
 - (i) the manner in which the scheme was entered into; and
 - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
 - (iii) the timing of the scheme;
it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
 - (iv) will be unable; or
 - (v) will be likely to be unable; or
 - (vi) will continue to be unable; or
 - (vii) will be likely to continue to be unable;
to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the first person; or
 - (b) a party to the scheme.

235 Scheme to avoid future liability to pay administrative penalty*Intention*

- (1) A person commits an offence if:
-

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- (a) a penalty is due and payable by a body corporate or trust under section 179; and
- (b) before the penalty became due and payable, the person entered into a scheme; and
- (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
 - (a) the person mentioned in subsection (1); or
 - (b) a party to the scheme.

Knowledge or belief

- (3) A person commits an offence if:
 - (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) before the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or

- (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;
- having regard to the other debts of the body corporate or trust, to pay the penalty.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (3); or
 - (b) a party to the scheme.

Objective purpose

- (5) A person (the **first person**) commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) before the penalty became due and payable, the first person entered into a scheme; and
 - (c) having regard to:
 - (i) the manner in which the scheme was entered into; and
 - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
 - (iii) the timing of the scheme;
 it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (iv) will be unable; or
 - (v) will be likely to be unable; or
 - (vi) will continue to be unable; or
 - (vii) will be likely to continue to be unable;

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to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the first person; or
 - (b) a party to the scheme.

Part 23—Enforceable undertakings

236 Simplified outline

The following is a simplified outline of this Part:

- A person may give the Regulator an enforceable undertaking about compliance with this Act or the associated provisions.

237 Acceptance of undertakings

- (1) The Regulator may accept any of the following undertakings:
 - (a) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, take specified action;
 - (b) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, refrain from taking specified action;
 - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act or the associated provisions, or is unlikely to contravene this Act or the associated provisions, in the future.
- (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 Regulator must publish the undertaking on the Regulator's website.

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238 Enforcement of undertakings

- (1) If:
- (a) a person has given an undertaking under section 237; and
 - (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 the Federal Court for an order under subsection (2) of this section.
- (2) If the Federal 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.

Part 24—Review of decisions

Division 1—Introduction

239 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of delegates of the Regulator may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the Regulator.
- Certain decisions of the Regulator may be reviewed by the Administrative Appeals Tribunal.

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Division 2—Decisions of the Regulator

240 Reviewable decisions

For the purposes of this Act, each of the following decisions of the Regulator is a *reviewable decision*:

Reviewable decisions	
Item	Decision
1	A decision to refuse to issue a certificate of entitlement under section 15.
2	A decision under subsection 15(3) to state that a specified number is the unit entitlement in respect of a certificate of entitlement.
3	A decision to refuse to declare that an offsets project is an eligible offsets project under section 27.
4	A decision, under regulations or legislative rules made for the purposes of subsection 29(1), to vary an eligible offsets project declaration.
5	A decision, under regulations or legislative rules made for the purposes of any of the following provisions, to refuse to vary an eligible offsets project declaration: (a) subsection 29(1); (b) subsection 30(1); (c) subsection 31(2).
6	A decision, under regulations or legislative rules made for the purposes of any of the following provisions, to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1); (c) subsection 34(1); (d) subsection 35(1); (e) subsection 36(1); (f) subsection 37(1); (g) subsection 38(1); (h) subsection 139(1).

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Reviewable decisions

Item	Decision
7	A decision, under regulations or legislative rules made for the purposes of either of the following provisions, to refuse to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1).
8	A decision, under regulations or legislative rules made for the purposes of section 57, to make a determination.
13	A decision under section 88, 89, 90 or 91 to require a person to relinquish a specified number of Australian carbon credit units.
15	A decision to make a declaration under subsection 97(2).
16	A decision under section 98 to vary a carbon maintenance obligation declaration.
17	A decision under section 98 to refuse to vary a carbon maintenance obligation declaration.
18	A decision under section 99 to refuse to revoke a carbon maintenance obligation declaration.
19	A decision under section 130 to refuse to approve the application of a methodology determination to an eligible offsets project.
20	A decision to refuse to extend a period under subsection 153(5).
21	A decision under section 169 to refuse a request not to set out the project area or project areas for an eligible offsets project in the Emissions Reduction Fund Register.
22	A decision to refuse to remit the whole or a part of an amount under subsection 180(2).

241 Applications for reconsideration of decisions made by delegates of the Regulator

Scope

- (1) This section applies to a reviewable decision if the decision is made by a delegate of the Regulator.

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Application

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Regulator for the Regulator to reconsider the decision.
- (3) The application must:
 - (a) be in a form approved in writing by the Regulator; and
 - (b) set out the reasons for the application; and
 - (c) be accompanied by the fee (if any) specified in the regulations or the legislative rules.
- (4) The application must be made within:
 - (a) 28 days after the applicant is informed of the decision; or
 - (b) if, either before or after the end of that period of 28 days, the Regulator extends the period within which the application may be made—the extended period.
- (5) An approved form of an application may provide for verification by statutory declaration of statements in applications.
- (6) A fee specified under paragraph (3)(c) must not be such as to amount to taxation.

242 Reconsideration by the Regulator

- (1) Upon receiving such an application, the Regulator must:
 - (a) reconsider the decision; and
 - (b) affirm, vary or revoke the decision.
- (2) The Regulator's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (3) The Regulator must give to the applicant a written notice stating the Regulator's decision on the reconsideration.

- (4) Within 28 days after making the decision on the reconsideration, the Regulator must give the applicant a written statement of the Regulator's reasons for the decision.

243 Deadline for reconsideration

- (1) The Regulator must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The Regulator is taken, for the purposes of this Part, to have made a decision affirming the original decision if the Regulator has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

244 Review by the Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal to review a reviewable decision if the Regulator has affirmed or varied the decision under section 242.
- (2) Applications may be made to the Administrative Appeals Tribunal to review a reviewable decision if the decision was not made by a delegate of the Regulator.

245 Stay of proceedings for the recovery of an administrative penalty

Scope

- (1) This section applies if:
 - (a) a notice was given under section 88, 89, 90 or 91 in relation to a project that is or was an eligible offsets project; and
 - (b) the notice required a person to relinquish a particular number of Australian carbon credit units; and
 - (c) the person did not comply with the requirement within 90 days after the notice was given; and

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- (d) proceedings for the recovery of the penalty payable under section 179 in respect of the non-compliance with the requirement (including any late payment penalty payable under section 180 in relation to the section 179 penalty) are before a court; and
- (e) any of the following subparagraphs applies:
 - (i) the decision to require the person to relinquish a specified number of Australian carbon credit units is being reconsidered by the Regulator under section 242;
 - (ii) the decision to require the person to relinquish a specified number of Australian carbon credit units has been affirmed or varied by the Regulator under section 242, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
 - (iii) the decision to require the person to relinquish a specified number of Australian carbon credit 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:
 - (a) if subparagraph (1)(e)(i) applies—the Regulator notifies the applicant for reconsideration of the Regulator’s decision on the reconsideration; or
 - (b) if subparagraph (1)(e)(ii) or (iii) applies—the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.
- (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.

Part 26—Emissions Reduction Assurance Committee

Division 1—Establishment and functions of the Emissions Reduction Assurance Committee

254 Emissions Reduction Assurance Committee

The committee known immediately before the commencement of this section as the Domestic Offsets Integrity Committee is continued in existence as the Emissions Reduction Assurance Committee.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

255 Functions of the Emissions Reduction Assurance Committee

The Emissions Reduction Assurance Committee has the following functions:

- (a) the functions that are conferred on it by this Act, the regulations and the legislative rules;
- (b) to advise the Minister about matters that:
 - (i) relate to offsets projects; and
 - (ii) are referred to the Committee by the Minister;
- (c) to advise the Secretary about matters that:
 - (i) relate to offsets projects; and
 - (ii) are referred to the Committee by the Secretary;
- (d) to monitor the compliance of methodology determinations with the offsets integrity standards;
- (e) to undertake periodic reviews of methodology determinations;
- (f) to undertake public consultation in relation to reviews of methodology determinations;

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- (g) to advise the Minister in relation to the outcomes of reviews of methodology determinations and any related public consultation;
- (h) to advise the Secretary in relation to the outcomes of reviews of methodology determinations and any related public consultation;
- (ha) to undertake crediting period extension reviews;
- (hb) to undertake public consultation in relation to crediting period extension reviews;
- (hc) to advise the Minister in relation to the outcomes of crediting period extension reviews and any related public consultation;
- (hd) to advise the Secretary in relation to the outcomes of crediting period extension reviews and any related public consultation;
- (i) to do anything incidental to or conducive to the performance of the above functions.

255AA Request for review of methodology determinations

- (1) A person may, by written notice given to the Emissions Reduction Assurance Committee, request the Committee to review one or more methodology determinations under paragraph 255(e).
- (2) A request under subsection (1) must be accompanied by a statement that sets out:
 - (a) the reasons why the methodology determinations should be reviewed; and
 - (b) if there are any inconsistencies between the methodology determinations and the offsets integrity standards—an explanation of those inconsistencies.
- (3) If the Emissions Reduction Assurance Committee receives a request under subsection (1), the Committee must consider whether to undertake a review in response to the request.

255A Crediting period extension reviews

- (1) For the purposes of this Act, a *crediting period extension review* means a review of whether a methodology determination should be varied so as to extend the crediting periods for the eligible offsets projects covered by the determination.
- (2) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must have regard to whether the relevant eligible offsets projects would still comply with the offsets integrity standard set out in paragraph 133(1)(a).
- (3) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must conduct such public consultation as it considers appropriate.
- (4) In performing the function conferred by paragraph 255(ha), the Emissions Reduction Assurance Committee must ensure that, for each methodology determination, the Committee completes a crediting period extension review before the first point in time when an eligible offsets project covered by the determination starts the last 12 months of its last crediting period.

Division 2—Membership of the Emissions Reduction Assurance Committee

256 Membership of the Emissions Reduction Assurance Committee

The Emissions Reduction Assurance Committee consists of the following members:

- (a) a Chair;
- (b) at least 4, and not more than 8, other members.

257 Appointment of Emissions Reduction Assurance Committee members

- (1) Each Emissions Reduction Assurance Committee member is to be appointed by the Minister by written instrument.

Note: An Emissions Reduction Assurance Committee member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as an Emissions Reduction Assurance Committee member unless the Minister is satisfied that the person has:

- (a) substantial experience or knowledge; and
- (b) significant standing;

in at least one field of expertise that is relevant to the functions of the Emissions Reduction Assurance Committee.

- (3) The Minister must ensure that the Chair of the Emissions Reduction Assurance Committee is not a person covered by subsection (4).

- (4) This subsection applies to the following persons:

- (a) an employee of the Commonwealth;
- (b) an employee of an authority of the Commonwealth;
- (c) a person who holds a full-time office under a law of the Commonwealth.

- (5) The Minister must ensure that one Emissions Reduction Assurance Committee member:
 - (a) is an SES employee in the Department; or
 - (b) holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department.
- (6) The Minister must ensure that at least one of the Emissions Reduction Assurance Committee members is an officer of the Commonwealth Scientific and Industrial Research Organisation nominated by the Chief Executive of the Commonwealth Scientific and Industrial Research Organisation.
- (7) An Emissions Reduction Assurance Committee member holds office on a part-time basis.

258 Period for appointment for Emissions Reduction Assurance Committee members

An Emissions Reduction Assurance Committee member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see the *Acts Interpretation Act 1901*.

259 Acting Emissions Reduction Assurance Committee members

Acting Chair of Emissions Reduction Assurance Committee

- (1) The Minister may appoint an Emissions Reduction Assurance Committee member to act as the Chair of the Emissions Reduction Assurance Committee:
 - (a) during a vacancy in the office of the Emissions Reduction Assurance Committee Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair of the Emissions Reduction Assurance Committee:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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Acting Emissions Reduction Assurance Committee member (other than the Chair)

- (2) The Minister may appoint a person to act as an Emissions Reduction Assurance Committee member (other than the Chair of the Emissions Reduction Assurance Committee):
- (a) during a vacancy in the office of an Emissions Reduction Assurance Committee member (other than the Chair of the Emissions Reduction Assurance Committee), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when an Emissions Reduction Assurance Committee member (other than the Chair of the Emissions Reduction Assurance Committee):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) A person is not eligible for appointment to act as:
- (a) the Chair of the Emissions Reduction Assurance Committee; or
 - (b) an Emissions Reduction Assurance Committee member (other than the Chair of the Emissions Reduction Assurance Committee);

unless the person is eligible for appointment as an Emissions Reduction Assurance Committee member.

Note 1: See subsection 257(2).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

260 Procedures

- (1) The regulations or the legislative rules may prescribe the procedures to be followed at or in relation to meetings of the Emissions Reduction Assurance Committee, including matters relating to the following:

- (a) the convening of meetings of the Emissions Reduction Assurance Committee;
 - (b) the number of Emissions Reduction Assurance Committee members who are to constitute a quorum;
 - (c) the selection of an Emissions Reduction Assurance Committee member to preside at meetings of the Emissions Reduction Assurance Committee in the absence of the Chair of the Emissions Reduction Assurance Committee;
 - (d) the manner in which questions arising at a meeting of the Emissions Reduction Assurance Committee are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Emissions Reduction Assurance Committee if:
 - (a) without meeting, a majority of Emissions Reduction Assurance Committee members indicate agreement with the resolution in accordance with the method determined by the Emissions Reduction Assurance Committee under subsection (3); and
 - (b) all Emissions Reduction Assurance Committee members were informed of the proposed resolution, or reasonable efforts had been made to inform all Emissions Reduction Assurance Committee members of the proposed resolution.
- (3) Subsection (2) applies only if the Emissions Reduction Assurance Committee:
 - (a) determines that it applies; and
 - (b) determines the method by which Emissions Reduction Assurance Committee members are to indicate agreement with resolutions.
- (4) If an Emissions Reduction Assurance Committee member is an APS employee in the Department, the member:
 - (a) is not entitled to vote for a resolution at a meeting of the Emissions Reduction Assurance Committee; and
 - (b) is not entitled to indicate agreement with a resolution as mentioned in paragraph (2)(a); and

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- (c) is not to be counted for the purposes of determining whether a majority of Emissions Reduction Assurance Committee members:
 - (i) have voted for a resolution at a meeting of the Emissions Reduction Assurance Committee; or
 - (ii) have indicated agreement with a resolution as mentioned in paragraph (2)(a).

261 Disclosure of interests to the Minister

An Emissions Reduction Assurance Committee member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

262 Disclosure of interests to Emissions Reduction Assurance Committee

- (1) An Emissions Reduction Assurance Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Emissions Reduction Assurance Committee must disclose the nature of the interest to a meeting of the Emissions Reduction Assurance Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Emissions Reduction Assurance Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Emissions Reduction Assurance Committee.
- (4) Unless the Emissions Reduction Assurance Committee otherwise determines, the Emissions Reduction Assurance Committee member:
 - (a) must not be present during any deliberation by the Emissions Reduction Assurance Committee on the matter; and

- (b) must not take part in any decision of the Emissions Reduction Assurance Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Emissions Reduction Assurance Committee member:
 - (a) must not be present during any deliberation of the Emissions Reduction Assurance Committee for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Emissions Reduction Assurance Committee.

263 Outside employment

An Emissions Reduction Assurance Committee member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

264 Remuneration and allowances

- (1) An Emissions Reduction Assurance Committee member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) An Emissions Reduction Assurance Committee member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

265 Leave of absence

- (1) The Minister may grant leave of absence to the Chair of the Emissions Reduction Assurance Committee on the terms and conditions that the Minister determines.

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- (2) The Chair of the Emissions Reduction Assurance Committee may grant leave of absence to an Emissions Reduction Assurance Committee member on the terms and conditions that the Chair determines.

266 Resignation

- (1) An Emissions Reduction Assurance Committee member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

267 Termination of appointment

- (1) The Minister may terminate the appointment of an Emissions Reduction Assurance Committee member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of an Emissions Reduction Assurance Committee member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with one or more of his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
 - (b) the member is absent, except on leave of absence, for 3 consecutive meetings of the Emissions Reduction Assurance Committee; or

- (c) the member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 263); or
 - (d) the member fails, without reasonable excuse, to comply with section 261 or 262.
- (3) The Minister may terminate the appointment of the Chair of the Emissions Reduction Assurance Committee if the Chair is:
 - (a) an employee of the Commonwealth; or
 - (b) an employee of an authority of the Commonwealth; or
 - (c) a person who holds a full-time office under a law of the Commonwealth.
- (4) The Minister may terminate the appointment of an Emissions Reduction Assurance Committee member if the Minister is of the opinion that the performance of the member has been unsatisfactory.

268 Other terms and conditions

An Emissions Reduction Assurance Committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

269 Assistance to Emissions Reduction Assurance Committee

- (1) Any or all of the following bodies:
 - (a) the Regulator;
 - (b) the Department;
 - (c) any other Department, agency or authority of the Commonwealth;may assist the Emissions Reduction Assurance Committee in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the provision of advice;

Part 26 Emissions Reduction Assurance Committee

Division 2 Membership of the Emissions Reduction Assurance Committee

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- (c) the making available of resources and facilities (including secretariat services and clerical assistance).
- (3) If an officer or employee of a body mentioned in subsection (1) assists the Emissions Reduction Assurance Committee, the officer or employee is taken, for the purposes of this Act, to be a person assisting the Emissions Reduction Assurance Committee under this section.

Part 27—Secrecy

270 Secrecy

- (1) A person commits an offence if:
 - (a) the person is, or has been, an entrusted public official; and
 - (b) the person has obtained protected information in his or her capacity as an entrusted public official; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
 - (a) the disclosure or use is authorised by a provision of this Part;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.

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

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act or a legislative instrument under this Act, an entrusted public official is not to be required:
 - (a) to produce to a court or tribunal a document containing protected information; or
 - (b) to disclose protected information to a court or tribunal.

Note: See also the *Clean Energy Regulator Act 2011*, which deals with the use and disclosure of information by officials of the Clean Energy Regulator.

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271 Disclosure or use for the purposes of this Act or a legislative instrument under this Act

An entrusted public official may disclose or use protected information if:

- (a) the disclosure or use is for the purposes of this Act or a legislative instrument under this Act; or
- (b) the disclosure or use is for the purposes of the *Australian National Registry of Emissions Units Act 2011* or a legislative instrument under that Act;
- (c) the disclosure or use is for the purposes of the performance of the functions of the Regulator or the Emissions Reduction Assurance Committee under this Act or a legislative instrument under this Act; or
- (d) the disclosure or use is in the course of the entrusted public official's employment or service as an entrusted public official.

272 Disclosure to the Minister

An entrusted public official may disclose protected information to the Minister.

273 Disclosure to the Secretary etc.

An entrusted public official may disclose protected information to:

- (a) the Secretary; or
- (b) an officer of the Department who is authorised by the Secretary, in writing, for the purposes of this section;

if the disclosure is for the purposes of:

- (c) advising the Minister; or
- (d) facilitating Australia's compliance with its international obligations under:
 - (i) the Climate Change Convention; or
 - (ii) the Kyoto Protocol; or

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- (iii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol; or
- (e) facilitating the development of an international agreement (if any) that is to be the successor (whether immediate or otherwise) to the Kyoto Protocol.

275 Disclosure to a Royal Commission

- (1) An entrusted public official may disclose protected information to a Royal Commission.
- (2) The Regulator may, by writing, impose conditions to be complied with in relation to protected audit information disclosed under subsection (1) by:
 - (f) an audit team leader; or
 - (g) a person assisting an audit team leader.
- (3) The Chair of the Emissions Reduction Assurance Committee may, by writing, impose conditions to be complied with in relation to protected ERAC information disclosed under subsection (1) by:
 - (a) the Chair; or
 - (b) an Emissions Reduction Assurance Committee member; or
 - (c) a person assisting the Emissions Reduction Assurance Committee under section 269.
- (4) An instrument under subsection (2) or (3) is not a legislative instrument.

276 Disclosure to certain persons and bodies

Scope

- (1) This section applies if the Regulator is satisfied that particular protected audit information will enable or assist any of the following persons or bodies:
 - (b) Low Carbon Australia Limited (ACN 141 478 748);
 - (ba) the Australian Transaction Reports and Analysis Centre;

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- (c) a prescribed professional disciplinary body;
 - (d) a person or body responsible for the administration of a scheme that involves the issue of prescribed eligible carbon units;
- to perform or exercise any of the functions or powers of the person or body.

Disclosure

- (3) If any of the following individuals:
- (e) an individual who is an audit team leader;
 - (f) an individual assisting an audit team leader;
- is authorised by the Regulator, in writing, for the purposes of this section, the individual may disclose that protected audit information to the person or body concerned.

Secondary disclosure and use

- (4) A person commits an offence if:
- (a) the person is:
 - (i) a prescribed professional disciplinary body; or
 - (ii) a member of a prescribed professional disciplinary body; and
 - (b) protected audit information has been disclosed under subsection (3) to the body; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
- (a) the disclosure or use is with the consent of the Regulator; and
 - (b) the disclosure or use is for the purpose of:
 - (i) deciding whether or not to take disciplinary or other action; or
 - (ii) taking that action.

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Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Regulator may, by writing, impose conditions to be complied with in relation to protected audit information disclosed under subsection (3).
- (7) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (6); 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.

- (8) An instrument under subsection (6) is not a legislative instrument.

277 Disclosure to certain financial bodies

Scope

- (1) This section applies if the Regulator is satisfied that particular protected audit information will enable or assist a body corporate that:
 - (a) either:
 - (i) conducts, or is involved in the supervision of, a financial market; or
 - (ii) is a body corporate that holds an Australian CS facility licence or an Australian derivative trade repository licence, or that operates a prescribed derivative trade repository; and
 - (b) is specified in the regulations or the legislative rules; to monitor compliance with, enforce, or perform functions or exercise powers under:
 - (c) the *Corporations Act 2001*; or
 - (d) the business law of a State or Territory; or
 - (e) the business law of a foreign country; or

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- (f) the operating rules (if any) of the body corporate.

Disclosure

- (3) If any of the following individuals:
 - (e) an individual who is an audit team leader;
 - (f) an individual assisting an audit team leader;is authorised by the Regulator, in writing, for the purposes of this section, the individual may disclose that protected audit information to the body corporate.

Secondary disclosure and use

- (4) A person commits an offence if:
 - (a) the person is:
 - (i) a body corporate; or
 - (ii) an officer, employee or agent of a body corporate; and
 - (b) protected audit information has been disclosed under subsection (3) to the body corporate; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
 - (a) the disclosure or use is with the consent of the Regulator; and
 - (b) the disclosure or use is for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under:
 - (i) the *Corporations Act 2001*; or
 - (ii) the business law of a State or Territory; or
 - (iii) the business law of a foreign country; or
 - (iv) the operating rules (if any) of the body corporate.

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Regulator may, by writing, impose conditions to be complied with by the body corporate and its officers, employees and agents in relation to protected audit information disclosed to the body corporate under subsection (3).
- (7) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (6); 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.

- (8) An instrument under subsection (6) is not a legislative instrument.

Meaning of expressions

- (9) In this section, the following expressions have the same meanings as in the *Corporations Act 2001*:
 - (a) *Australian CS facility licence*;
 - (aa) *Australian derivative trade repository licence*;
 - (b) *financial market*;
 - (c) *officer*;
 - (d) *operating rules*;
 - (e) *prescribed derivative trade repository*.

278 Disclosure with consent

An entrusted public official may disclose protected information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

279 Disclosure to reduce threat to life or health

An entrusted public official may disclose protected information if:

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- (a) the entrusted public official believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual; and
- (b) the disclosure is for the purposes of preventing or lessening that threat.

280 Disclosure of publicly available information

An entrusted public official may disclose protected information if it has already been lawfully made available to the public.

281 Disclosure of summaries or statistics

Any of the following persons:

- (f) an audit team leader;
- (g) a person assisting an audit team leader;

may disclose:

- (h) summaries of protected audit information; or
- (i) statistics derived from protected audit information;

if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

282 Disclosure for purposes of law enforcement—protected audit information

Scope

- (1) This section applies if the Regulator is satisfied that disclosure of particular protected audit information is reasonably necessary for:
 - (a) the enforcement of the criminal law; or
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue.

Disclosure

- (3) If any of the following individuals:
 - (e) an individual who is an audit team leader;

(f) an individual assisting an audit team leader;
is authorised by the Regulator, in writing, for the purposes of this section, the individual may disclose that protected audit information to:

- (g) a Department, agency or authority of the Commonwealth, a State or a Territory; or
- (h) an Australian police force;
whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

Secondary disclosure and use

- (4) A person commits an offence if:
 - (a) the person is, or has been, an employee or officer of:
 - (i) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (ii) an Australian police force; and
 - (b) protected audit information has been disclosed under subsection (3) to the Department, agency, authority or police force, as the case may be; and
 - (c) the person has obtained the information in the person's capacity as an employee or officer of the Department, agency, authority or police force, as the case may be; and
 - (d) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
 - (a) the disclosure or use is with the consent of the Regulator; and
 - (b) the disclosure or use is for the purpose of:
 - (i) enforcing the criminal law; or
 - (ii) enforcing a law imposing a pecuniary penalty; or
 - (iii) protecting the public revenue.

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Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Regulator may, by writing, impose conditions to be complied with in relation to protected audit information disclosed under subsection (3).
- (7) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (6); 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.

- (8) An instrument under subsection (6) is not a legislative instrument.

283 Disclosure for purposes of law enforcement—protected ERAC information

Scope

- (1) This section applies if the Chair of the Emissions Reduction Assurance Committee is satisfied that disclosure of particular protected ERAC information is reasonably necessary for:
 - (a) the enforcement of the criminal law; or
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue.

Disclosure

- (2) The Chair of the Emissions Reduction Assurance Committee may disclose that protected ERAC information to:
 - (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (b) an Australian police force;whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

- (3) If any of the following individuals:
- (a) an Emissions Reduction Assurance Committee member;
 - (b) an individual assisting the Emissions Reduction Assurance Committee under section 269;
- is authorised by the Chair of the Emissions Reduction Assurance Committee, in writing, for the purposes of this section, the individual may disclose that protected ERAC information to:
- (c) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (d) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

Secondary disclosure and use

- (4) A person commits an offence if:
- (a) the person is, or has been, an employee or officer of:
 - (i) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (ii) an Australian police force; and
 - (b) protected ERAC information has been disclosed under subsection (2) or (3) to the Department, agency, authority or police force, as the case may be; and
 - (c) the person has obtained the information in the person's capacity as an employee or officer of the Department, agency, authority or police force, as the case may be; and
 - (d) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
- (a) the disclosure or use is with the consent of the Chair of the Emissions Reduction Assurance Committee; and
 - (b) the disclosure or use is for the purpose of:

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- (i) enforcing the criminal law; or
- (ii) enforcing a law imposing a pecuniary penalty; or
- (iii) protecting the public revenue.

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Chair of the Emissions Reduction Assurance Committee may, by writing, impose conditions to be complied with in relation to protected ERAC information disclosed under subsection (2) or (3).
- (7) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (6); 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.

- (8) An instrument under subsection (6) is not a legislative instrument.

284 Disclosure for purposes of review of Act

An entrusted public official may disclose protected information to a person if:

- (a) the person is conducting a review under section 306; and
- (b) the disclosure is for the purposes of that review.

Part 28—Miscellaneous

286 Miscellaneous functions of the Regulator

The Regulator has the following functions:

- (a) to monitor compliance with this Act and the associated provisions;
- (b) to promote compliance with this Act and the associated provisions;
- (c) to conduct and/or co-ordinate education programs about this Act and the associated provisions;
- (d) to advise the Minister on matters relating to this Act and the associated provisions;
- (da) to advise the Emissions Reduction Assurance Committee on matters relating to the making, variation or revocation of methodology determinations;
- (e) to advise and assist persons in relation to their obligations under this Act and the associated provisions;
- (f) to advise and assist prospective applicants in connection with ensuring that applications are in accordance with this Act;
- (g) to advise and assist the representatives of persons in relation to compliance by persons with this Act and the associated provisions;
- (h) to liaise with regulatory and other relevant bodies, whether in Australia or elsewhere, about co-operative arrangements for matters relating to this Act and the associated provisions;
- (i) to collect, analyse, interpret and disseminate statistical information relating to the operation of this Act and the associated provisions.

287 Computerised decision-making

- (1) The Regulator may, by legislative instrument, arrange for the use, under the Regulator's control, of computer programs for any

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purposes for which the Regulator may, or must, under this Act, the regulations or the legislative rules:

- (a) make a decision; or
 - (b) exercise any power or comply with any obligation; or
 - (c) do anything else related to making a decision or exercising a power or complying with an obligation.
- (2) For the purposes of this Act, the regulations and the legislative rules, the Regulator is taken to have:
- (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under such an arrangement.

288 Regulator's power to require further information

Applications

- (1) If:
- (a) a person makes an application to the Regulator under this Act, the regulations or the legislative rules; and
 - (b) the Regulator exercises a power, under another provision of this Act, the regulations or the legislative rules, to require the applicant to give the Regulator further information in connection with the application;
- the Regulator:
- (c) must ensure that the further information is relevant to the matter to which the application relates; and
 - (d) must ensure that the power is exercised in a reasonable way.

Requests

- (2) If:
- (a) a person makes a request to the Regulator under this Act; and

- (b) the Regulator exercises a power, under another provision of this Act, to require the person to give the Regulator further information in connection with the request;
- the Regulator:
- (c) must ensure that the further information is relevant to the matter to which the request relates; and
 - (d) must ensure that the power is exercised in a reasonable way.

289 Information previously given to the Regulator

If:

- (a) on a particular occasion, a person gave information to the Regulator under this Act, the regulations or the legislative rules; and
 - (b) the person is subsequently required or permitted, under this Act, the regulations or the legislative rules, to give the same information to the Regulator;
- the person is taken to have given the information to the Regulator on that later occasion.

290 Actions may be taken by an agent of a project proponent

- (1) The principles of agency apply in relation to the taking, by a project proponent for an eligible offsets project, of any of the following actions under this Act, the regulations or the legislative rules:
 - (a) making an application;
 - (b) giving information in connection with an application;
 - (c) withdrawing an application;
 - (d) giving a report;
 - (e) giving a notice (including an electronic notice);
 - (f) making a submission;
 - (g) making a request;
 - (h) giving information in connection with a request.

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- (2) For example, the project proponent may authorise another person to be the project proponent's agent for the purposes of making an application under this Act, the regulations or the legislative rules on the project proponent's behalf.
- (3) To avoid doubt, this section does not, by implication, limit the application of the principles of agency to other matters arising under this Act, the regulations or the legislative rules.

291 Delegation by the Minister

- (1) The Minister may, by writing, delegate any or all of his or her functions or powers under this Act, the regulations or the legislative rules to:
 - (a) the Secretary; or
 - (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument, unless the power is conferred by:
 - (a) subsection 106(1) (power to make a methodology determination); or
 - (b) subsection 114(1) (power to vary a methodology determination); or
 - (c) subparagraph 122(1)(b)(ii) (power to specify the duration of a methodology determination); or
 - (d) subsection 123(1) (power to revoke a methodology determination).

292 Delegation by a State Minister or a Territory Minister

- (1) A Minister of a State or Territory may, by writing, delegate any or all of his or her functions or powers under this Act to a person who:
 - (a) is an officer or employee of the State or Territory, as the case may be; and
 - (b) holds or performs the duties of an office or position that is equivalent to a position occupied by an SES employee in the Australian Public Service.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister of the State or the Minister of the Territory, as the case may be.

293 Delegation by the Secretary

- (1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Act, the regulations or the legislative rules to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

294 Concurrent operation of State and Territory laws

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

295 Law relating to legal professional privilege not affected

This Act does not affect the law relating to legal professional privilege.

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296 Arrangements with States and Territories

States

- (1) The Minister may make arrangements with a Minister of a State with respect to the administration of this Act, including:
 - (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of that State; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of that State; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of that State.
- (2) The Minister may arrange with a Minister of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Australian Capital Territory

- (3) The Minister may make arrangements with a Minister of the Australian Capital Territory with respect to the administration of this Act, including:
 - (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of the Australian Capital Territory; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of the Australian Capital Territory.
- (4) The Minister may arrange with a Minister of the Australian Capital Territory for the variation or revocation of an arrangement in force under subsection (3).

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Northern Territory

- (5) The Minister may make arrangements with a Minister of the Northern Territory with respect to the administration of this Act, including:
- (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of the Northern Territory; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of the Northern Territory.
- (6) The Minister may arrange with a Minister of the Northern Territory for the variation or revocation of an arrangement in force under subsection (5).

Norfolk Island

- (7) The Minister may make arrangements with a Minister of Norfolk Island with respect to the administration of this Act, including:
- (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of Norfolk Island; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of Norfolk Island.
- (8) The Minister may arrange with a Minister of Norfolk Island for the variation or revocation of an arrangement in force under subsection (7).

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Gazettal

- (9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the *Gazette*.

Instrument is not a legislative instrument

- (10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

297 Liability for damages

None of the following:

- (a) the Minister;
- (b) a delegate of the Minister;
- (c) the Secretary;
- (d) a delegate of the Secretary;
- (e) the Regulator;
- (f) a delegate of the Regulator;
- (fa) an inspector;
- (fb) a person assisting an inspector;
- (g) an audit team leader;
- (h) an Emissions Reduction Assurance Committee member;

is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

- (i) in the performance or purported performance of any function;
or
- (j) in the exercise or purported exercise of any power;
conferred by this Act (other than section 20D or 20E) or the associated provisions.

298 Executive power of the Commonwealth

This Act does not, by implication, limit the executive power of the Commonwealth.

299 Notional payments by the Commonwealth

- (1) The purpose of this section is to ensure that amounts payable under this Act, the regulations or the legislative rules are notionally payable by the Commonwealth (or parts of the Commonwealth).
- (2) The Minister responsible for administering the *Financial Management and Accountability Act 1997* may give written directions for the purposes of this section, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.

300 Compensation for acquisition of property

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

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

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

301 Native title rights not affected

This Act does not affect the operation of the *Native Title Act 1993*.

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302 Racial Discrimination Act not affected

This Act does not affect the operation of the *Racial Discrimination Act 1975*.

303 Alternative constitutional basis

- (1) Without limiting its effect apart from this section, this Act and the associated provisions also have effect as provided by this section.

External affairs

- (2) This Act and the associated provisions also have the effect they would have if:
- (a) subsections (3) and (4) had not been enacted; and
 - (b) this Act and the associated 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 offsets projects

- (3) This Act and the associated provisions also have the effect they would have if subsection (2) had not been enacted and each reference in this Act and the associated provisions to an offsets project were, by express provision, confined to an offsets project:
- (a) where the project proponent is, or each of the project proponents are, a constitutional corporation; or
 - (b) where the project proponent is:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (c) that is, or is to be, carried on in a Territory; or
 - (d) that is, or is to be, carried on in a Commonwealth place; or
 - (e) that is, or is to be, carried on in the course of, or in relation to, any of the following:
 - (i) trade or commerce between Australia and places outside Australia;

- (ii) trade or commerce among the States;
- (iii) trade or commerce within a Territory, between a State or Territory or between 2 Territories.

Limited power to purchase prescribed eligible carbon units

- (4) This Act and the associated provisions also have the effect they would have if:
 - (a) subsection (2) had not been enacted; and
 - (b) this Act, by express provision, prohibited the Regulator from entering into a carbon abatement contract, on behalf of the Commonwealth, for the purchase by the Commonwealth of prescribed eligible carbon units unless the units represent carbon abatement by a constitutional corporation.

304 Prescribing matters by reference to other instruments

- (1) The regulations or the legislative 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.
- (2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (3) If the regulations or the legislative 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 ensure that the text of the matter applied, adopted or incorporated is published on the Regulator's website.
- (4) Subsection (3) does not apply if the publication would infringe copyright.

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305 Administrative decisions under the regulations

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.

305A Administrative decisions under the legislative rules

The legislative rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

306 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) the regulations; and
 - (c) other instruments made 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 before the end of 31 December 2014.

Subsequent reviews

- (6) Each subsequent review under subsection (1) must be completed within 3 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:
- (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.
- (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 Clean Energy Regulator;
 - (c) such other persons as the Minister considers relevant.

307 Regulations

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.

308 Legislative rules

The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:

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

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

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

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.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Carbon Credits (Carbon Farming Initiative) Act 2011	101, 2011	15 Sept 2011	ss. 3–307: 8 Dec 2011 (see F2011L02581) Remainder: Royal Assent	
Clean Energy (Consequential Amendments) Act 2011	132, 2011	18 Nov 2011	Schedule 1 (items 51–59, 61–97, 99, 215A, 220A): 2 Apr 2012 (see s. 2(1)) Schedule 1 (items 257–258A): 1 July 2012 Schedule 5: 8 Dec 2011 (see s. 2(1))	Sch. 1 (items 215A, 220A)
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 2 (item 3): 2 Apr 2012 (s 2(1) item 8)	—
Clean Energy Legislation Amendment Act 2012	84, 2012	28 June 2012	Schedule 3: 29 June 2012	Sch. 3 (item 8)
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (items 25–28) and Schedule 4 (items 9–11, 50): Royal Assent	Sch. 4 (item 50)
Corporations and Financial Sector Legislation Amendment Act 2013	59, 2013	21 June 2013	Schedule 1 (items 33–35): 19 July 2013	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 1 (item 30): Royal Assent	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 11): 24 June 2014	—

Carbon Credits (Carbon Farming Initiative) Act 2011

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Endnotes

Endnote 3—Legislation history

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 1A–15, 23– 369, 382–395, 400–547): 13 Dec 2014 (s 2(1) item 2 and (F2014L01691)) Sch 2 (item 12A): <u>1 July</u> <u>2016 (s 2(1) item 3)</u>	Sch 1 (items 15, 382–395)

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 119, 2014
s. 4	am No 132, 2011; No 119, 2014
s. 5	am No 132, 2011; No 136, 2012; No 31, 2014; No 119, 2014
s 6	am No 119, 2014
Heading to s. 7	am. No. 132, 2011
s. 7	am. No. 132, 2011; No 119, 2014
s 7A	ad No 119, 2014
s 9A	ad No 119, 2014
s 9B.....	ad No 119, 2014
Part 2	
Division 1	
s 10	am No 119, 2014
Division 2	
s 11	am No 132, 2011; No 119, 2014
Division 3	
s. 12	am. No. 132, 2011
s 13	am No 132, 2011; No 119, 2014
s. 14	am. No. 132, 2011
s. 15	am No 132, 2011; No 84, 2012; No 119, 2014
s 15A	ad No 119, 2014
s 16	am No. 132, 2011; No 119, 2014
s 17	am No. 132, 2011
	rep No 119, 2014
s 18	am. No 132, 2011; No 119, 2014
s 19	am No 132, 2011
	rep No 119, 2014
Part 2A heading	ad No 119, 2014

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Endnote 4—Amendment history

Provision affected	How affected
Division 1 heading	ad No 119, 2014
s 20A	ad No 119, 2014
Division 2 heading	ad No 119, 2014
s 20B.....	ad No 119, 2014
s 20C.....	ad No 119, 2014
s 20CA.....	ad No 119, 2014
s 20D	ad No 119, 2014
s 20E.....	ad No 119, 2014
Division 3 heading	ad No 119, 2014
s 20F	ad No 119, 2014
s 20G	ad No 119, 2014
Division 4 heading	ad No 119, 2014
s 20H	ad No 119, 2014
s 20J.....	ad No 119, 2014
s 20K	ad No 119, 2014
Part 3	
Division 1	
s. 21	am. No. 132, 2011
Division 2	
s 22	am No 132, 2011; No 119, 2014
s 23	am No 132, 2011; No 119, 2014
s. 24	am. No. 132, 2011
s. 25	am. No. 132, 2011
s 26	am No 132, 2011; No 119, 2014
s 27	am No 132, 2011; No 119, 2014; <u>No 119, 2014</u>
s 27A	ad No 119, 2014
s. 28	am. No. 132, 2011; No. 84, 2012
s 28A	ad No 119, 2014
Division 3	
s 29	am No 132, 2011; No 119, 2014
s 30	am No 132, 2011; No 119, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 31	am No 132, 2011; No 84, 2012; No 119, 2014
s 31A	ad No 119, 2014
Division 4	
Subdivision A	
s 32	am No 132, 2011; No 119, 2014
s 33	am No 132, 2011; No 119, 2014
Subdivision B	
s 34	am No 132, 2011; No 84, 2012; No 119, 2014
s 35	am No 132, 2011; No 119, 2014
s 36	am No 132, 2011; No 119, 2014
s 37	am No 132, 2011; No 119, 2014
s 38	am No 132, 2011; No 119, 2014
Division 6 heading.....	rep No 119, 2014
s. 41	am. No. 132, 2011
	rep No 119, 2014
Division 8 heading	rs No 119, 2014
s 43	am No 119, 2014
s 44	am No 119, 2014
s 45	am No 119, 2014
Division 9 heading.....	rep No 119, 2014
Division 10	
s 46	am No 119, 2014
s 47	am No 132, 2011; No 119, 2014
s 48	am No 132, 2011; No 119, 2014
s 49	am No 132, 2011
s 50	am No 119, 2014
s 51	am No 119, 2014
Division 11	
s 52	am No 132, 2011; No 119, 2014
Division 12	
s 53	am No 119, 2014

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Endnote 4—Amendment history

Provision affected	How affected
s 53A	ad No 119, 2014
s 55	rep No 119, 2014
s 56	am No 119, 2014
Division 13	
s 57	am No 132, 2011; No 119, 2014
s 58	am No 132, 2011
	rep No 119, 2014
Part 4 heading	rs No 119, 2014
s 59	am No 132, 2011
	rs No 119, 2014
s 60	am No 132, 2011
	rs No 119, 2014
s 61	am. No. 132, 2011
	rep No 119, 2014
s 62	am No 132, 2011
	rep No 119, 2014
s 63	am No 132, 2011
	rep No 119, 2014
s 64	am No 132, 2011
	rep No 119, 2014
s 65	am No 132, 2011
	rep No 119, 2014
s 66	am No 132, 2011
	rep No 119, 2014
s 67	rep No 119, 2014
Part 5 heading	rs No 119, 2014
Division 1 heading	rep No 119, 2014
s 68	am No 132, 2011
	rs No 119, 2014
Division 2 heading	rep No 119, 2014
s 69	rs No 119, 2014

Endnote 4—Amendment history

Provision affected	How affected
Division 3 heading.....	rep No 119, 2014
s 70	am No 132, 2011
	rs No 119, 2014
s 71	am No 132, 2011
	rs No 119, 2014
s 72	am No 132, 2011
	rep No 119, 2014
s 73	am No 132, 2011
	rep No 119, 2014
s 74	am No 132, 2011
	rep No 119, 2014
Part 6	
Division 1	
s 75	am No 132, 2011; No 119, 2014
Division 2	
s 76	am No 132, 2011; No 119, 2014
s 77	am. No. 132, 2011; No 119, 2014
s 77A	ad No 119, 2014
Division 3	
Subdivision A heading.....	rep No 119, 2014
s 78	am No 132, 2011
s 79	am No 132, 2011
s 80	am No 132, 2011
s 81	am No 132, 2011; No 119, 2014
s 82	am No 132, 2011; No 119, 2014
s 83	am No 132, 2011; No 119, 2014
Subdivision B heading.....	rep No 119, 2014
s. 84	am. No. 132, 2011; No 119, 2014
Subdivision C heading.....	rep No 119, 2014
s. 85	am. No. 132, 2011; No 119, 2014
Part 7	

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Endnote 4—Amendment history

Provision affected	How affected
Division 1	
s 86A	ad No 119, 2014
s 87	am No 119, 2014
Division 2	
s. 88	am. No. 132, 2011; No 119, 2014
Division 3	
s 89	am No 132, 2011; No 119, 2014
s 90	am No 132, 2011; No 119, 2014
s 91	am No 132, 2011; No 119, 2014
Division 4 heading.....	rep No 119, 2014
s 92	rep No 119, 2014
s 93	am No 132, 2011
	rep No 119, 2014
s 94	am No 132, 2011
	rep No 119, 2014
s 95	am No 132, 2011
	rep No 119, 2014
Part 8	
Division 2	
s 97	am No 132, 2011; No 119, 2014
s 98	am No 132, 2011; No 119, 2014
s 99	am No 132, 2011; No 119, 2014
Division 3	
ss. 100, 101	am. No. 132, 2011
Part 9	
Division 1	
s 105	am No 119, 2014
Division 2	
Subdivision A	
s 106	am No 132, 2011; No 84, 2012; No 119, 2014
s 107	rep No 119, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 108	rep No 119, 2014
s 109	rep No 119, 2014
s 110	rep No 119, 2014
s 111	rep No 119, 2014
s 112	rep No 119, 2014
s 113	rep No 119, 2014
Subdivision B	
s 114	am No 119, 2014
s 116	rep No 119, 2014
s 117	rep No 119, 2014
s 118	rep No 119, 2014
s 119	rep No 119, 2014
s 120	rep No 119, 2014
s 121	rep No 119, 2014
Subdivision C	
s 122	am No 84, 2012; No 119, 2014
Subdivision D	
s 123	am No 119, 2014
Subdivision DA heading	
s 123A	ad No 119, 2014
s 123B	ad No 119, 2014
s 123C	ad No 119, 2014
Subdivision DB heading	
s 123D	ad No 119, 2014
Subdivision E	
s 124A	ad No 119, 2014
s 125	am No 132, 2011
s 126	am No 132, 2011
s 127	am No 132, 2011
s 128	am No 132, 2011; No 119, 2014
s 129	am No 132, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s 130	am No 132, 2011; No 119, 2014
Subdivision F heading	rep No 119, 2014
s 131	am No 132, 2011
	rep No 119, 2014
s 132	rep No 119, 2014
Division 3	
s 133	am No 119, 2014
Part 10	
Division 2	
s 135	rs No 119, 2014
Division 3	
s. 136	am. No. 132, 2011; No 119, 2014
s 138	am No 119, 2014
s 139	am No 132, 2011; No 119, 2014
s 140	am No 132, 2011; No 119, 2014
s 141	am No 132, 2011
ss. 143, 144	am. No. 132, 2011
Division 4	
s 145	am No 119, 2014
Part 11	
Division 1	
s. 146	am. No. 132, 2011
Division 2	
ss. 147–149	am. No. 132, 2011
Division 3	
s. 150A	ad. No. 132, 2011
s 152	am No 132, 2011
s 153	am No 132, 2011; No 119, 2014
s 154	am No 132, 2011; No 119, 2014
s 155	am No 119, 2014
s 156	am No 132, 2011

Endnote 4—Amendment history

Provision affected	How affected
s 157	am No 132, 2011 rep No 119, 2014
s 157A	ad No 132, 2011 am No 119, 2014
s 158	am No 119, 2014
Part 12	
Division 1	
s. 159	am. No. 132, 2011
Division 2	
s 160	am No 132, 2011
s 161	am No 132, 2011
s 162	am No 132, 2011; No 119, 2014
Heading to Div. 3..... of Part 12	rep. No. 103, 2013
s. 163	am. No. 132, 2011 rep. No. 132, 2011
Division 3 heading	ad No 119, 2014
s 163	ad No 119, 2014
s 163A	ad No 119, 2014
Division 4	
ss. 164–166.....	am. No. 132, 2011
Division 5 heading	rs No 119, 2014
s 167	am No 132, 2011; No 119, 2014
s 168	am No 132, 2011; No. 84, 2012; No 119, 2014
s 169	am No 132, 2011; No 119, 2014
Part 13	
s 171	am No 132, 2011; No 119, 2014
Part 14	rep. No. 132, 2011
s. 172	am. No. 132, 2011 rep. No. 132, 2011
s. 173	am. No. 132, 2011

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Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 132, 2011
Part 15	
Division 1	
s. 174	am. No. 132, 2011
Division 2	
s. 175	am No 132, 2011
s. 176	am No 132, 2011
s. 177	am No 132, 2011
	rep No 119, 2014
s. 178	am No 132, 2011
	rep No 119, 2014
Division 3	
s. 179	am No 119, 2014
s. 180	am No 132, 2011; No 119, 2014
s. 181	am No 132, 2011
s. 182	am No 132, 2011; No 119, 2014
s. 183	am No 132, 2011
Part 16	
s. 184	am. No. 132, 2011
Heading to s. 185	am. No. 132, 2011
ss. 185–187	am. No. 132, 2011
Heading to s. 188	am. No. 132, 2011
s. 188	am. No. 132, 2011
Part 17	
Division 1	
s. 190	am No 119, 2014
Division 2	
s. 191	am No 119, 2014
s. 192	am No 132, 2011; No 119, 2014
Part 18	
Division 2	

Endnote 4—Amendment history

Provision affected	How affected
s 196	am No 132, 2011; No 119, 2014
s 197	am No 132, 2011; No 119, 2014
Part 19	
Division 1	
s 213	am No 132, 2011; No 119, 2014
Division 2	
s. 214	am. No. 132, 2011; No. 136, 2012; No 119, 2014
s. 215	am. No. 132, 2011
Part 21	
s. 222	am. No. 132, 2011
Part 23	
ss. 236–238.....	am. No. 132, 2011
Part 24	
Division 1	
s 239	am No 132, 2011; No 119, 2014
Division 2 heading	am. No. 132, 2011
s 240	am No 132, 2011; No 136, 2012; No 119, 2014
s. 241	am. No. 132, 2011; No 119, 2014
Heading to s. 242	am. No. 132, 2011
s. 242	am. No. 132, 2011
s. 243	am. No. 132, 2011 (as am. by No. 136, 2012)
s. 244	am. No. 132, 2011
s. 245	am. No. 132, 2011
Division 3 heading.....	rep No 119, 2014
s 245A	rep No 119, 2014
Part 25	rep. No. 132, 2011
ss. 246–253.....	rep. No. 132, 2011
Part 26 heading	rs No 119, 2014
Division 1 heading	rs No 119, 2014
s 254	rs No 119, 2014
s 255	am No 119, 2014

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Endnote 4—Amendment history

Provision affected	How affected
s 255AA.....	ad No 119, 2014
s 255A	ad No 119, 2014
Division 2 heading	rs No 119, 2014 (md Sch 1 item 279)
s 256	am No 119, 2014
s. 257	am. No. 132, 2011; No 119, 2014
s 258	am No 119, 2014
s. 259	am. No. 136, 2012; No 119, 2014
s 260	am No 119, 2014
s 261	am No 119, 2014
s 262	am No 119, 2014
s 263	am No 119, 2014
s 264	am No 119, 2014
s 265	am No 119, 2014
s 266	am No 119, 2014
s 267	am No 119, 2014
s 268	am No 119, 2014
s. 269	am. No. 132, 2011; No 119, 2014
Part 27	
Note to s. 270.....	ad. No. 132, 2011
s. 271	am. No. 132, 2011; No 119, 2014
s. 273	am. No. 136, 2012
s. 274	rep. No. 132, 2011
s 275	am No 132, 2011; No 119, 2014
s 276	am No 132, 2011
s 277	am No 132, 2011; No 59, 2013; No 119, 2014
ss. 280, 281	am. No. 132, 2011
s 282	am No 132, 2011
s 283	am No 119, 2014
s. 285	rep. No. 132, 2011
Part 28	
s 286	am. No. 132, 2011; No 119, 2014

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Provision affected	How affected
s 287	am. No. 132, 2011; No 119, 2014
s 288	am No 132, 2011; No 119, 2014
s 289	rs No 119, 2014
s 290	am No 119, 2014
s 291	am No 119, 2014
s 293	am No 119, 2014
s. 297	am. No. 132, 2011; No 119, 2014
s 299	am No 119, 2014
s 300	am No 119, 2014
s 303	rs No 119, 2014
s 304	am No 132, 2011; No 119, 2014
s 305	am. No. 132, 2011
s 305A	ad No 119, 2014
s. 306	rs. No. 132, 2011
s 308	ad No 119, 2014