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**Australian National Registry of
Emissions Units Bill 2011**

No. , 2011

(Climate Change and Energy Efficiency)

**A Bill for an Act about the Australian National
Registry of Emissions Units, and for other purposes**

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1 **A Bill for an Act about the Australian National**
2 **Registry of Emissions Units, and for other purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Australian National Registry of*
8 *Emissions Units Act 2011*.

Section 2

1 **2 Commencement**

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

6

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.	
2. Sections 3 to 97	At the same time as section 3 of the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> commences.	

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

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

13 **3 Simplified outline**

14 The following is a simplified outline of this Act:

- 15
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- 20
- The Australian National Registry of Emissions Units is continued in existence.
 - The Administrator may, in accordance with the regulations, open a Registry account in the name of a person.
 - Entries may be made in Registry accounts for:
 - (a) Australian carbon credit units; and

- 1 (b) Kyoto units; and
- 2 (c) non-Kyoto international emissions units.
- 3 • This Act sets out rules about dealings with:
- 4 (a) Kyoto units; and
- 5 (b) non-Kyoto international emissions units.

6 4 Definitions

7 In this Act:

8 **account number**, in relation to a Registry account, has the meaning
9 given by subsection 10(4).

10 **Administrator** means the Carbon Credits Administrator.

11 **alter** the Registry, includes:

- 12 (a) make an entry in the Registry; and
- 13 (b) remove an entry from the Registry.

14 **assigned amount unit** means an assigned amount unit issued in
15 accordance with the relevant provisions of the Kyoto rules. It is
16 immaterial whether the unit was issued in or out of Australia.

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

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

21 **certified emission reduction** means a certified emission reduction
22 issued outside Australia in accordance with the relevant provisions
23 of the Kyoto rules.

24 **civil penalty order** means an order under subsection 69(1).

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

Section 4

1 ***clean development mechanism project*** means a project that is
2 treated as a clean development mechanism project for the purposes
3 of the relevant provisions of the Kyoto rules.

4 ***Climate Change Convention*** means the United Nations
5 Framework Convention on Climate Change done at New York on
6 9 May 1992, as amended and in force for Australia from time to
7 time.

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

12 ***commitment period*** means a period that is treated as a commitment
13 period for the purposes of the Kyoto rules.

14 Note: The first commitment period begins on 1 January 2008 and ends on
15 31 December 2012.

16 ***commitment period reserve*** has the meaning given by the
17 regulations.

18 ***Commonwealth holding account*** means a Commonwealth
19 Registry account designated as a Commonwealth holding account.

20 ***Commonwealth Registry account*** means a Registry account kept
21 in the name of the Commonwealth.

22 ***decision of the Meeting of the Kyoto Parties*** means a decision of
23 the Meeting of the Kyoto Parties as existing from time to time. It is
24 immaterial whether the decision was made before, at or after the
25 commencement of this section.

26 ***designated***, in relation to a Commonwealth Registry account,
27 means designated under regulations made for the purposes of
28 section 12.

29 ***electronic communication*** means a communication by means of
30 guided and/or unguided electromagnetic energy.

31 ***electronic notice transmitted to the Administrator*** has the meaning
32 given by section 5.

33 ***eligible international emissions unit*** means:

Section 4

- 1 (a) a certified emission reduction (other than a temporary
2 certified emission reduction or a long-term certified emission
3 reduction); or
4 (b) an emission reduction unit; or
5 (c) a removal unit; or
6 (d) a prescribed unit issued in accordance with the Kyoto rules;
7 or
8 (e) a non-Kyoto international emissions unit.

9 It is immaterial whether a unit covered by paragraph (d) was issued
10 in or outside Australia.

11 ***emission reduction unit*** means an emission reduction unit issued
12 in accordance with the relevant provisions of the Kyoto rules. It is
13 immaterial whether the unit was issued in or outside of Australia.

14 ***engage in conduct*** means:

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

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

20 ***Federal Court*** means the Federal Court of Australia.

21 ***foreign account***:

- 22 (a) when used in relation to a Kyoto unit—means an account
23 kept within a foreign Kyoto registry; or
24 (b) when used in relation to a non-Kyoto international emissions
25 unit—means an account kept within a foreign non-Kyoto
26 registry.

27 ***foreign country*** includes a region where:

- 28 (a) the region is a colony, territory or protectorate of a foreign
29 country; or
30 (b) the region is part of a foreign country; or
31 (c) the region is under the protection of a foreign country; or
32 (d) a foreign country exercises jurisdiction or control over the
33 region; or

Section 4

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

3 **foreign Kyoto registry** means:

- 4 (a) a registry of a Kyoto Party (other than Australia) that is the
5 Kyoto Party's national registry for Kyoto units; or
6 (b) the CDM registry established in accordance with paragraph 1
7 of Appendix D to the Annex to Decision 3/CMP.1 of the
8 Meeting of the Kyoto Parties.

9 **foreign non-Kyoto registry** means a registry that:

- 10 (a) is located in a foreign country; and
11 (b) is specified in the regulations; and
12 (c) is not a foreign Kyoto registry.

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

15 **international agreement** means an agreement whose parties are:

- 16 (a) Australia and a foreign country; or
17 (b) Australia and 2 or more foreign countries.

18 **issue**, in relation to an Australian carbon credit unit, has the same
19 meaning as in the *Carbon Credits (Carbon Farming Initiative) Act*
20 *2011*.

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

23 **Kyoto Party** means a Party to the Kyoto Protocol.

24 **Kyoto Protocol** means the Kyoto Protocol to the United Nations
25 Framework Convention on Climate Change done at Kyoto on
26 11 December 1997, as amended and in force for Australia from
27 time to time.

28 Note: The text of the Kyoto Protocol is set out in Australian Treaty Series
29 2008 No. 2 ([2008] ATS 2). In 2011, the text of an international
30 agreement in the Australian Treaty Series was accessible through the
31 Australian Treaties Library on the AustLII website
32 (www.austlii.edu.au).

33 **Kyoto rules** means:

- 1 (a) the Kyoto Protocol; or
2 (b) a decision of the Meeting of the Kyoto Parties; or
3 (c) if a standard or other instrument, as existing from time to
4 time, is adopted by the Meeting of the Kyoto Parties for a
5 purpose relating to:
6 (i) the Kyoto Protocol; or
7 (ii) a decision of the Meeting of the Kyoto Parties;
8 the standard or instrument as existing from time to time; or
9 (d) if a standard or other instrument, as existing at a particular
10 time, is adopted by the Meeting of the Kyoto Parties for a
11 purpose relating to:
12 (i) the Kyoto Protocol; or
13 (ii) a decision of the Meeting of the Kyoto Parties;
14 the standard or instrument as existing at that time; or
15 (e) a prescribed instrument that relates to:
16 (i) the Kyoto Protocol; or
17 (ii) a decision of the Meeting of the Kyoto Parties.

18 It is immaterial whether a standard or instrument covered by
19 paragraph (c), (d) or (e) was made before, at or after the
20 commencement of this section. Despite anything in subsection
21 14(2) of the *Legislative Instruments Act 2003*, regulations made for
22 the purposes of paragraph (e) may prescribe an instrument:

- 23 (f) as existing at a particular time; or
24 (g) as existing from time to time.

25 ***Kyoto unit*** means:

- 26 (a) an assigned amount unit; or
27 (b) a certified emission reduction; or
28 (c) an emission reduction unit; or
29 (d) a removal unit; or
30 (e) a prescribed unit issued in accordance with the Kyoto rules.

31 It is immaterial whether a unit covered by paragraph (e) was issued
32 in or outside Australia.

33 ***long-term certified emission reduction*** means a certified emission
34 reduction that is treated as a long-term certified emission reduction
35 for the purposes of the relevant provisions of the Kyoto rules.

Section 4

1 ***long-term certified emission reduction replacement***
2 ***(non-certification) account*** means a Commonwealth Registry
3 account designated as the long-term certified emission reduction
4 replacement (non-certification) account for a particular
5 commitment period.

6 ***long-term certified emission reduction replacement (storage***
7 ***reversal) account*** means a Commonwealth Registry account
8 designated as the long-term certified emission reduction
9 replacement (storage reversal) account for a particular commitment
10 period.

11 ***mandatory cancellation account*** means a Commonwealth Registry
12 account designated as the mandatory cancellation account for a
13 particular commitment period.

14 ***Meeting of the Kyoto Parties*** means the Meeting of the Parties to
15 the Climate Change Convention serving as the meeting of the
16 Parties to the Kyoto Protocol.

17 ***non-Kyoto international emissions unit*** means:

- 18 (a) a prescribed unit issued in accordance with an international
19 agreement (other than the Kyoto Protocol); or
20 (b) a prescribed unit issued outside Australia under a law of a
21 foreign country.

22 It is immaterial whether a unit covered by paragraph (a) was issued
23 in or outside Australia.

24 ***open***, in relation to a Registry account, means open under
25 regulations made for the purposes of subsection 10(1).

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

28 ***person*** means any of the following:

- 29 (a) an individual;
30 (b) a body corporate;
31 (c) a trust;
32 (d) a corporation sole;
33 (e) a body politic;

1 (f) a local governing body.

2 **registered holder**, in relation to:

3 (a) an Australian carbon credit unit; or

4 (b) a Kyoto unit; or

5 (c) a non-Kyoto international emissions unit;

6 means the person in whose Registry account there is an entry for
7 the unit.

8 **Registry** means the Australian National Registry of Emissions
9 Units continued in existence under section 9.

10 **Registry account** means an account kept in accordance with
11 regulations made for the purposes of subsection 10(1).

12 **removal unit** means a removal unit issued in accordance with the
13 relevant provisions of the Kyoto rules. It is immaterial whether the
14 unit was issued in or out of Australia.

15 **reviewable decision** has the meaning given by section 82.

16 **Secretary** means the Secretary of the Department.

17 **temporary certified emission reduction** means a certified emission
18 reduction that is treated as a temporary certified emission reduction
19 for the purposes of the relevant provisions of the Kyoto rules.

20 **transfer**:

21 (a) in relation to a Kyoto unit—has the meaning given by
22 section 33; or

23 (b) in relation to a non-Kyoto international emissions unit—has
24 the meaning given by section 50.

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

27 **trustee** has the same meaning as in the *Income Tax Assessment Act*
28 *1997*.

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

Section 5

1 ***voluntary cancellation account*** means a Commonwealth Registry
2 account designated as the voluntary cancellation account for a
3 particular commitment period.

4 **5 Electronic notice transmitted to the Administrator**

- 5 (1) For the purposes of this Act, a notice is an ***electronic notice***
6 ***transmitted to the Administrator*** if, and only if:
- 7 (a) the notice is transmitted to the Administrator by means of an
8 electronic communication; and
- 9 (b) if the Administrator requires that the notice be transmitted, in
10 accordance with particular information technology
11 requirements, by means of a particular kind of electronic
12 communication—the Administrator’s requirement has been
13 met; and
- 14 (c) the notice complies with regulations made for the purposes of
15 subsection (2).
- 16 (2) The regulations may make provision for or in relation to the
17 security and authenticity of notices transmitted to the
18 Administrator by means of an electronic communication.
- 19 (3) Regulations made for the purposes of subsection (2) may deal with:
- 20 (a) encryption; and
21 (b) authentication of identity.
- 22 (4) Subsection (3) does not limit subsection (2).
- 23 (5) For the purposes of this Act, if a notice is transmitted to the
24 Administrator by means of an electronic communication, the notice
25 is taken to have been transmitted on the day on which the
26 electronic communication is dispatched.
- 27 (6) Subsection (5) of this section has effect despite subsections 14(3)
28 and (4) of the *Electronic Transactions Act 1999*.
- 29 (7) This section does not, by implication, limit the regulations that may
30 be made under the *Electronic Transactions Act 1999*.

1 **6 Crown to be bound**

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

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

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

7 **7 Extension to external Territories**

8 This Act extends to every external Territory.
9

1 **Part 2—Australian National Registry of Emissions**
2 **Units**

3 **Division 1—Introduction**

4 **8 Simplified outline**

5 The following is a simplified outline of this Part:

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- The Australian National Registry of Emissions Units is continued in existence.
 - The Administrator may, in accordance with the regulations, open a Registry account in the name of a person.
 - A person may, in accordance with the regulations, request the Administrator to close the person's Registry account.
 - The Administrator is empowered to make corrections to the Registry.
 - A person may apply to the Federal Court for the rectification of the Registry.

1 **Division 2—Australian National Registry of Emissions**
2 **Units**

3 **9 Australian National Registry of Emissions Units**

4 (1) The register:

5 (a) known as the Australian National Registry of Emissions
6 Units; and

7 (b) that was in existence under the executive power of the
8 Commonwealth immediately before the commencement of
9 this section;

10 continues in existence as a register under this Act under the name
11 Australian National Registry of Emissions Units.

12 (2) The Registry is to be kept by the Administrator.

13 Note: In this Act, *Registry* means the Australian National Registry of
14 Emissions Units—see section 4.

15 (3) The Registry is to be maintained by electronic means.

16 (4) The purposes of the Registry are as follows:

17 (a) to be a registry for Australian carbon credit units;

18 (b) to be Australia's national registry for Kyoto units.
19

1 **Division 3—Registry accounts**

2 **10 Registry accounts**

- 3 (1) The regulations may make provision for and in relation to
4 empowering the Administrator to open accounts within the
5 Registry.
- 6 (2) An account opened under regulations made for the purposes of
7 subsection (1) is to be opened in the name of a particular person.
- 8 (3) An account kept in the name of a person is to be known as a
9 **Registry account** of the person.
- 10 (4) Each Registry account is to be identified by a unique number, to be
11 known as the **account number** of the Registry account.
- 12 (5) A person may have 2 or more Registry accounts.
- 13 (6) Regulations made for the purposes of subsection (1) may make
14 provision for or in relation to any or all of the following matters:
15 (a) requests to open Registry accounts;
16 (b) the approval by the Administrator of a form for such a
17 request;
18 (c) information that must accompany such a request;
19 (d) the fee (if any) that must accompany such a request;
20 (e) verification by statutory declaration of statements in such a
21 request;
22 (f) empowering the Administrator:
23 (i) to require a person who makes such a request to give the
24 Administrator further information in connection with
25 such a request; and
26 (ii) if the person breaches the requirement—to refuse to
27 consider the request, or to refuse to take any action, or
28 any further action, in relation to the request.
- 29 (7) Subsection (6) does not limit subsection (1).
- 30 (8) A fee mentioned in paragraph (6)(d) must not be such as to amount
31 to taxation.

1 Note 1: See also section 11 (identification procedures).

2 Note 2: See also section 16 (unilateral closure of Registry accounts).

3 **11 Opening of Registry accounts—identification procedures**

4 (1) The regulations may prescribe identification procedures that must
5 be carried out by the Administrator before the Administrator opens
6 a Registry account in the name of the person.

7 (2) The regulations may declare that a specified number is a
8 **transaction limit** for the purposes of this section.

9 (3) The regulations may make provision for identifying Registry
10 accounts that are subject to a transaction limit.

11 (4) An identification procedure prescribed under regulations made for
12 the purposes of subsection (1):

13 (a) may be expressed to apply to Registry accounts that are
14 subject to a transaction limit; or

15 (b) may be expressed to apply to Registry accounts that are not
16 subject to a transaction limit.

17 (5) The regulations may provide that, if a Registry account is subject
18 to a particular transaction limit, the Administrator must not:

19 (a) issue any Australian carbon credit units to the account; or

20 (b) comply with an instruction to transfer units to the account;

21 if doing so would result in the account having entries for a number
22 of units that exceeds the transaction limit.

23 **12 Designation of Commonwealth Registry accounts**

24 The regulations may empower the Administrator to designate a
25 Commonwealth Registry account as an account with a name
26 specified in the regulations.

27 **13 Opening of new Commonwealth Registry accounts**

28 The regulations may empower the Minister to direct the
29 Administrator to:

Section 14

- 1 (a) open a Registry account in the name of the Commonwealth;
2 and
3 (b) give that Registry account the designation specified in the
4 direction.

5 **14 Units in certain accounts cannot be transferred**

- 6 (1) The regulations may provide that, if there is an entry for a Kyoto
7 unit in a specified Commonwealth Registry account, the unit
8 cannot be transferred.
- 9 (2) Regulations made for the purposes of subsection (1) have effect
10 despite any other provision of this Act or the *Carbon Credits*
11 (*Carbon Farming Initiative*) Act 2011.

12 **15 Voluntary closure of Registry accounts**

- 13 (1) The regulations may make provision for and in relation to
14 empowering the Administrator to close a Registry account kept in
15 the name of a person.
- 16 (2) Regulations made for the purposes of subsection (1) must not
17 empower the Administrator to close a Registry account unless:
18 (a) the person, by written notice given to the Administrator,
19 requests the Administrator to close the account; and
20 (b) there are no entries for any Australian carbon credit units in
21 the account; and
22 (c) there are no entries for any Kyoto units in the account; and
23 (d) there are no entries for any non-Kyoto international
24 emissions units in the account.

25 **16 Unilateral closure of Registry accounts etc.**

- 26 (1) The regulations may make provision for and in relation to
27 empowering the Administrator to close a Registry account kept in
28 the name of a person.
- 29 (2) Regulations made for the purposes of subsection (1) must not
30 empower the Administrator to close a Registry account unless:

- 1 (a) the person has contravened, or is contravening, this Part or
2 regulations made for this proposes of this Part; and
3 (b) at least 30 days before closing the account, the Administrator
4 gives the person a written notice:
5 (i) stating that the Administrator proposes to close the
6 account; and
7 (ii) setting out the effect of any regulations made for the
8 purposes of subsections (3), (4), (5) and (6).

9 *Cancellation or transfer of units*

- 10 (3) The regulations may provide that, if immediately before the
11 Administrator closes a Registry account under regulations made for
12 the purposes of subsection (1), there is an entry for an Australian
13 carbon credit unit in the account, the unit is cancelled.
- 14 (4) The regulations may provide that, if immediately before the
15 Administrator closes a Registry account under regulations made for
16 the purposes of subsection (1), there is an entry for a Kyoto unit in
17 the account, the Administrator must transfer the unit to a voluntary
18 cancellation account.
- 19 (5) The regulations may provide that, if immediately before the
20 Administrator closes a Registry account under regulations made for
21 the purposes of subsection (1), there is an entry for a non-Kyoto
22 international emissions unit in the account, the unit is cancelled.

23 *Refusal of request to open new Registry account*

- 24 (6) The regulations may provide that, if:
25 (a) the Administrator has closed a person's Registry account
26 under regulations made for the purposes of subsection (1) of
27 this section; and
28 (b) the person requests the Administrator, under regulations
29 made for the purposes of subsection 10(1), to open a Registry
30 account in the name of the person;
31 the Administrator must, under regulations made for the purposes of
32 subsection 10(1), refuse the request.

Section 16

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Record

- (7) The Registry must set out a record of:
- (a) each closure under regulations made for the purposes of subsection (1); and
 - (b) each cancellation under regulations made for the purposes of subsection (3) or (5).

1 **Division 4—Entries in Registry accounts**

2 **17 Entries in Registry accounts**

3 *Australian carbon credit units*

- 4 (1) An entry for an Australian carbon credit unit in a Registry account
5 may be made in accordance with the *Carbon Credits (Carbon*
6 *Farming Initiative) Act 2011*.

7 *Kyoto units*

- 8 (2) An entry for a Kyoto unit in a Registry account may be made in
9 accordance with this Act.

10 *Non-Kyoto international emissions units*

- 11 (3) An entry for a non-Kyoto international emissions unit in a Registry
12 account may be made in accordance with this Act.
13

Section 18

1 **Division 5—Change in name of account holder**

2 **18 Change in name of account holder**

3 The regulations may provide that, if:

4 (a) a Registry account is kept in the name of a person; and

5 (b) the name of the person has changed; and

6 (c) the person applies in writing to the Administrator to have the
7 new name substituted for the previous name in the Registry
8 in relation to the account;

9 the Administrator may make the necessary alterations in the
10 Registry.
11

1 **Division 6—Correction and rectification of Registry**

2 **19 Corrections of clerical errors, obvious defects or unauthorised**
3 **entries etc.**

4 *Power of correction*

- 5 (1) The Administrator may alter the Registry for the purposes of
6 correcting:
- 7 (a) a clerical error or an obvious defect in the Registry; or
 - 8 (b) an entry made in the Registry without sufficient cause; or
 - 9 (c) an entry wrongly existing in the Registry; or
 - 10 (d) an entry wrongly removed from the Registry.
- 11 (2) The Administrator may exercise the power conferred by
12 subsection (1):
- 13 (a) on written application being made to the Administrator by a
14 person; or
 - 15 (b) on the Administrator's own initiative.
- 16 (3) The Administrator must not exercise the power conferred by
17 subsection (1) of this section in a manner contrary to a decision of
18 the Federal Court in proceedings under section 22.

19 *Publication of alteration*

- 20 (4) If the Administrator makes an alteration to the Registry under
21 subsection (1), the Administrator must cause to be published on the
22 Administrator's website a notice setting out the details of the
23 alteration.

24 *Refusal*

- 25 (5) If:
- 26 (a) the Administrator decides to refuse to alter the Registry under
27 subsection (1); and
 - 28 (b) the Administrator made the decision in response to an
29 application;

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1 the Administrator must give written notice of the decision to the
2 applicant.

3 **20 General power of correction of Registry—Kyoto units**

4 *Power of correction*

5 (1) The Administrator may make such alterations to the Registry as the
6 Administrator considers appropriate for the purposes of ensuring
7 that the relevant provisions of the Kyoto rules are complied with.

8 (2) The Administrator may exercise the power conferred by
9 subsection (1):

10 (a) on written application being made to the Administrator by a
11 person; or

12 (b) on the Administrator's own initiative.

13 *Publication of alteration*

14 (3) If the Administrator makes an alteration to the Registry under
15 subsection (1), the Administrator must cause to be published on the
16 Administrator's website a notice setting out the details of the
17 alteration.

18 *Refusal*

19 (4) If:

20 (a) the Administrator decides to refuse to alter the Registry under
21 subsection (1); and

22 (b) the Administrator made the decision in response to an
23 application;

24 the Administrator must give written notice of the decision to the
25 applicant.

1 **21 General power of correction of Registry—non-Kyoto**
2 **international emissions units**

3 *Power of correction*

- 4 (1) The Administrator may make such alterations to the Registry as the
5 Administrator considers appropriate for the purposes of ensuring
6 that the relevant provisions of an international agreement, to the
7 extent to which it relates to a non-Kyoto international emissions
8 unit, are complied with.
- 9 (2) The Administrator may exercise the power conferred by
10 subsection (1):
- 11 (a) on written application being made to the Administrator by a
12 person; or
13 (b) on the Administrator's own initiative.

14 *Publication of alteration*

- 15 (3) If the Administrator makes an alteration to the Registry under
16 subsection (1), the Administrator must cause to be published on the
17 Administrator's website a notice setting out the details of the
18 alteration.

19 *Refusal*

- 20 (4) If:
- 21 (a) the Administrator decides to refuse to alter the Registry under
22 subsection (1); and
23 (b) the Administrator made the decision in response to an
24 application;
- 25 the Administrator must give written notice of the decision to the
26 applicant.

27 **22 Rectification of Registry**

28 *Application for rectification by aggrieved person*

- 29 (1) If a person is aggrieved by any of the following:
30 (a) the omission of an entry from the Registry;

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- 1 (b) an entry made in the Registry without sufficient cause;
2 (c) an entry wrongly existing in the Registry;
3 (d) an error or defect in an entry in the Registry;
4 (e) an entry wrongly removed from the Registry;
5 the person may apply to the Federal Court for the rectification of
6 the Registry.

7 *Application for rectification by the Administrator*

- 8 (2) If the Administrator is concerned about any of the following:
9 (a) the omission of an entry from the Registry;
10 (b) an entry made in the Registry without sufficient cause;
11 (c) an entry wrongly existing in the Registry;
12 (d) an error or defect in an entry in the Registry;
13 (e) an entry wrongly removed from the Registry;
14 the Administrator may apply to the Federal Court for the
15 rectification of the Registry.

16 *Court orders*

- 17 (3) If an application is made under subsection (1) or (2) to the Federal
18 Court for the rectification of the Registry, the court may make such
19 order as it thinks fit directing the rectification of the Registry.
20 (4) An order made by the court must not be expressed to take effect
21 before the order is made.
22 (5) In proceedings under this section, the court may decide any
23 question that it is necessary or expedient to decide in connection
24 with the rectification of the Registry.

25 *Appearance of Administrator*

- 26 (6) Notice of an application under subsection (1) must be given to the
27 Administrator, whose representative:
28 (a) may appear and be heard; and
29 (b) must appear if so directed by the court.

1 *Copy of order to be given to Administrator*

2 (7) An office copy of an order made by the court may be given to the
3 Administrator.

4 *Compliance with order*

5 (8) The Administrator must, on receipt of the order, rectify the
6 Registry accordingly.
7

Section 23

1 **Division 7—Miscellaneous**

2 **23 Making a false entry in the Registry**

3 A person commits an offence if:

4 (a) the person:

5 (i) makes an entry in the Registry; or

6 (ii) causes an entry to be made in the Registry; or

7 (iii) concurs in the making of an entry in the Registry; and

8 (b) the person does so knowing that the entry is false.

9 Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

10 Note: The same conduct may be an offence against both this section and
11 section 145.4 of the *Criminal Code*.

12 **24 Falsified documents**

13 A person commits an offence if:

14 (a) the person produces or tenders in evidence a document; and

15 (b) the document falsely purports to be a copy of or extract from
16 an entry in the Registry.

17 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

18 Note: The same conduct may be an offence against both this section and
19 section 137.2 of the *Criminal Code*.

20 **25 Evidentiary provisions**

21 (1) The Administrator may supply a copy of or extract from the
22 Registry certified by the Administrator to be a true copy or true
23 extract, as the case may be.

24 (2) The certified copy or extract is admissible in evidence in all courts
25 and proceedings without further proof or production of the original.

26 (3) The Administrator may charge a fee specified in the regulations for
27 supplying a certified copy or extract under subsection (1).

28 (4) A fee specified under subsection (3) must not be such as to amount
29 to taxation.

1 **26 Use and disclosure of information obtained from the Registry**

2 *Use*

- 3 (1) A person must not use information to contact or send material to
4 another person if that information:
5 (a) is about the other person; and
6 (b) was obtained from the Registry.

7 *Disclosure*

- 8 (2) A person (the *first person*) must not disclose information that:
9 (a) is about another person; and
10 (b) was obtained from the Registry; and
11 (c) the first person knows is likely to be used to contact or send
12 material to the other person.

13 *Exception*

- 14 (3) Subsections (1) and (2) do not apply if the use or disclosure of the
15 information is relevant to:
16 (a) the holding of:
17 (i) Australian carbon credit units; or
18 (ii) Kyoto units; or
19 (iii) non-Kyoto international emissions units;
20 recorded in the Registry; or
21 (b) the exercise of the rights attaching to those units.
22 (4) A person who wishes to rely on subsection (3) bears an evidential
23 burden in relation to that matter.

24 Note: For *evidential burden*, see section 4.

25 *Ancillary contraventions*

- 26 (5) A person must not:
27 (a) aid, abet, counsel or procure a contravention of subsection (1)
28 or (2); or
29 (b) induce, whether by threats or promises or otherwise, a
30 contravention of subsection (1) or (2); or

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- 1 (c) be in any way, directly or indirectly, knowingly concerned in,
2 or party to, a contravention of subsection (1) or (2); or
3 (d) conspire with others to effect a contravention of
4 subsection (1) or (2).

5 *Civil penalty provisions*

- 6 (6) Subsections (1), (2) and (5) are *civil penalty provisions*.

7 Note: Part 7 provides for pecuniary penalties for breaches of civil penalty
8 provisions.

9 **27 Regulations about the Registry**

10 (1) The regulations may make further provision in relation to the
11 Registry.

12 (2) Regulations made for the purposes of subsection (1) may make
13 provision requiring the holder of a Registry account to notify a
14 matter to the Administrator.

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

16 *Requirement*

17 (4) If the holder of a Registry account is subject to a requirement under
18 regulations made for the purposes of subsection (1) or (2), the
19 holder must comply with that requirement.

20 *Ancillary contraventions*

21 (5) A person must not:

22 (a) aid, abet, counsel or procure a contravention of
23 subsection (4); or

24 (b) induce, whether by threats or promises or otherwise, a
25 contravention of subsection (4); or

26 (c) be in any way, directly or indirectly, knowingly concerned in,
27 or party to, a contravention of subsection (4); or

28 (d) conspire with others to effect a contravention of
29 subsection (4).

1 *Civil penalty provisions*

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

3 Note: Part 7 provides for pecuniary penalties for breaches of civil penalty
4 provisions.

5 **28 Suspension of operation of the Registry**

6 (1) The Administrator may temporarily suspend the operation of the
7 Registry if the Administrator is satisfied that:

8 (a) the suspension is required so that maintenance can be carried
9 out; or

10 (b) it is prudent to suspend the operation of the Registry in order
11 to:

12 (i) ensure the integrity of the Registry; or

13 (ii) prevent, mitigate or minimise abuse of the Registry; or

14 (iii) prevent, mitigate or minimise criminal activity
15 involving the Registry.

16 (2) If the Administrator suspends the operation of the Registry, the
17 Administrator must publish a notice on the Administrator's website
18 informing the public of the suspension.

19 (3) If the Administrator suspends the operation of the Registry, the
20 Administrator may defer taking action in relation to the Registry
21 until the suspension ends.
22

1 **Part 3—Kyoto units**
2

3 **29 Simplified outline**

4 The following is a simplified outline of this Part:

- 5

<ul style="list-style-type: none">• This Part sets out rules about dealings with Kyoto units.

6 **30 Entries for Kyoto units**

7 An entry for a Kyoto unit in a Registry account is to consist of the
8 serial number of the unit.

9 **31 Issue of Australia's assigned amount units**

10 *Object*

- 11 (1) The object of this section is to provide for the issue of Australia's
12 assigned amount units for a commitment period.

13 *Issue*

- 14 (2) The Secretary may, by written notice given to the Administrator,
15 direct the Administrator to issue to the Commonwealth, in
16 accordance with the Kyoto rules, a specified number of assigned
17 amount units for a specified commitment period.
- 18 (3) The Administrator must comply with a direction under
19 subsection (2).
- 20 (4) The Administrator is to issue an assigned amount unit by making
21 an entry for the unit in a Commonwealth holding account.
- 22 (5) This section does not, by implication, affect the validity of the
23 issue of assigned amount units, where the units were issued before
24 the commencement of this section under the executive power of the
25 Commonwealth.

32 Issue of removal units*Object*

- (1) The object of this section is to provide for the issue of Australia's removal units.

Issue

- (2) The Secretary may, by written notice given to the Administrator, direct the Administrator to issue to the Commonwealth, in accordance with the Kyoto rules, a specified number of removal units.
- (3) The Administrator must comply with a direction under subsection (2).
- (4) The Administrator is to issue a removal unit by making an entry for the unit in a Commonwealth holding account.
- (5) This section does not, by implication, affect the validity of the issue of removal units, where the units were issued before the commencement of this section under the executive power of the Commonwealth.

33 Transfer of Kyoto units

- (1) For the purposes of this Act, if there is an entry for a Kyoto 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
- (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

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- 1 (ii) the making of an entry for the unit in the other Registry
2 account kept by the first person; and
- 3 (c) the *transfer* of the unit from the first Registry account to a
4 foreign account kept by another person consists of:
- 5 (i) the removal of the entry for the unit from the first
6 Registry account; and
- 7 (ii) the making of an entry for the unit in the foreign
8 account kept by the other person; and
- 9 (d) the *transfer* of the unit from the first Registry account to a
10 foreign account kept by the first person consists of:
- 11 (i) the removal of the entry for the unit from the first
12 Registry account; and
- 13 (ii) the making of an entry for the unit in the foreign
14 account kept by the first person.
- 15 (2) For the purposes of this Act, if there is an entry for a Kyoto unit in
16 a foreign account, a *transfer* of the unit from the foreign account to
17 a Registry account consists of:
- 18 (a) the removal of the entry for the unit from the foreign account;
19 and
- 20 (b) the making of an entry for the unit in the Registry account.

21 **34 Domestic transfers of Kyoto units**

- 22 (1) If a person (the *first person*) is the registered holder of one or more
23 Kyoto units, the person may, by electronic notice transmitted to the
24 Administrator, instruct the Administrator to transfer the units from
25 the relevant Registry account kept by the person (the *first Registry*
26 *account*) to:
- 27 (a) a Registry account kept by another person; or
28 (b) another Registry account kept by the first person.
- 29 (2) An instruction under subsection (1) must set out:
- 30 (a) the account number of the first Registry account; and
31 (b) the account number of the Registry account mentioned in
32 paragraph (1)(a) or (b); and
33 (c) such other information as is specified in the regulations.

Compliance with instruction

- 1
- 2 (3) If the Administrator receives an instruction under subsection (1):
- 3 (a) if the Administrator is satisfied that giving effect to the
- 4 instruction would breach:
- 5 (i) regulations made for the purposes of section 39 (Kyoto
- 6 rules); or
- 7 (ii) regulations made for the purposes of section 41
- 8 (commitment period reserve); or
- 9 (iii) regulations made for the purposes of section 44
- 10 (Commonwealth Registry accounts);
- 11 the Administrator must, by written notice given to the first
- 12 person, refuse to give effect to the instruction; and
- 13 (b) if paragraph (a) does not apply—the Administrator must give
- 14 effect to the instruction as soon as practicable after receiving
- 15 it.
- 16 (4) If the Administrator gives effect to an instruction under
- 17 subsection (1), the Registry must set out a record of the instruction.
- 18 (5) If the first person is the Commonwealth, the Minister may give an
- 19 instruction under subsection (1) on behalf of the first person.

35 Outgoing international transfers of Kyoto units

- 20
- 21 (1) If:
- 22 (a) there is in force a declaration under section 37 that Australia
- 23 is in compliance with the emissions trading eligibility
- 24 requirements under the Kyoto rules; and
- 25 (b) a person (the *first person*) is the registered holder of one or
- 26 more Kyoto units;
- 27 the person may, by electronic notice transmitted to the
- 28 Administrator, instruct the Administrator to transfer the units from
- 29 the relevant Registry account kept by the person (the *first Registry*
- 30 *account*) to:
- 31 (c) a foreign account kept by another person; or
- 32 (d) a foreign account kept by the first person.
- 33 (2) An instruction under subsection (1) must set out:

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- 1 (a) the account number of the relevant Registry account kept by
2 the first person; and
3 (b) such other information as is specified in the regulations.

4 *Compliance with instruction*

- 5 (3) If the Administrator receives an instruction under subsection (1):
6 (a) if the Administrator is satisfied that giving effect to the
7 instruction would breach:
8 (i) regulations made for the purposes of section 39 (Kyoto
9 rules); or
10 (ii) regulations made for the purposes of section 41
11 (commitment period reserve);
12 the Administrator must, by written notice given to the first
13 person, refuse to give effect to the instruction; and
14 (b) if paragraph (a) does not apply—the Administrator must take
15 such steps as are required by regulations made for the
16 purposes of section 39.
- 17 (4) Regulations made for the purposes of section 39 may require the
18 Administrator to remove the entry for the unit or units from the
19 relevant Registry account.
- 20 (5) Subsection (4) does not limit section 39.
- 21 (6) If the Administrator takes steps under paragraph (3)(b) in relation
22 to an instruction, the Registry must set out a record of the
23 instruction.
- 24 (7) If the first person is the Commonwealth, the Minister may give an
25 instruction under subsection (1) on behalf of the first person.

26 **36 Incoming international transfers of Kyoto units**

- 27 (1) If:
28 (a) there is in force a declaration under section 37 that Australia
29 is in compliance with the emissions trading eligibility
30 requirements under the Kyoto rules; and

- 1 (b) the Administrator receives an instruction, in accordance with
 2 the relevant provisions of the Kyoto rules, for the transfer of
 3 a Kyoto unit from a foreign account; and
 4 (c) the Kyoto unit is not specified in the regulations as a unit that
 5 cannot be transferred to a Registry account; and
 6 (d) making an entry for the Kyoto unit in the relevant Registry
 7 account would not breach regulations made for the purposes
 8 of section 39 (Kyoto rules); and
 9 (e) making an entry for the Kyoto unit in the relevant Registry
 10 account would not breach regulations made for the purposes
 11 of section 44 (Commonwealth Registry accounts);
 12 the Administrator must make an entry for the Kyoto unit in the
 13 relevant Registry account.

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

- 16 (2) However, the Administrator may refuse to make an entry for the
 17 Kyoto unit in the relevant Registry account if the Administrator has
 18 reasonable grounds to suspect that the instruction is fraudulent.

19 **37 Compliance by Australia with emissions trading eligibility** 20 **requirements under the Kyoto rules**

21 *Declaration*

- 22 (1) If the Minister is satisfied that Australia is in compliance with the
 23 eligibility requirements mentioned in paragraph 2 of the Annex to
 24 Decision 11/CMP.1 of the Meeting of the Kyoto Parties, the
 25 Minister must, by writing, declare that Australia is in compliance
 26 with the emissions trading eligibility requirements under the Kyoto
 27 rules.

28 *Revocation of declaration*

- 29 (2) If:
 30 (a) a declaration is in force under subsection (1); and
 31 (b) the Minister is not satisfied that Australia is in compliance
 32 with the eligibility requirements mentioned in paragraph 2 of
 33 the Annex to Decision 11/CMP.1 of the Meeting of the
 34 Kyoto Parties;

Section 38

1 the Minister must, by writing, revoke the declaration.

2 *Declaration or revocation is not a legislative instrument*

3 (3) An instrument made under subsection (1) or (2) is not a legislative
4 instrument.

5 **38 Conversion of assigned amount units, or removal units, to**
6 **emission reduction units—joint implementation projects**
7 **etc.**

8 *Scope*

- 9 (1) This section applies if:
- 10 (a) a person keeps a Registry account in which there is an entry
11 for:
 - 12 (i) an assigned amount unit; or
 - 13 (ii) a removal unit; and
 - 14 (b) the unit was obtained by the person as the result of a transfer
15 in accordance with regulations made for the purposes of
16 subsection 157(2) of the *Carbon Credits (Carbon Farming*
17 *Initiative) Act 2011*; and
 - 18 (c) before 1 July 2013, the person, by electronic notice
19 transmitted to the Administrator, instructs the Administrator
20 to convert the unit to an emission reduction unit; and
 - 21 (d) the instruction sets out the account number of the Registry
22 account; and
 - 23 (e) the conditions (if any) specified in the regulations are
24 satisfied; and
 - 25 (f) giving effect to the instruction would not breach regulations
26 made for the purposes of section 39 of this Act; and
 - 27 (g) the instruction does not contravene regulations made for the
28 purposes of subsection 41(5) of this Act.

29 *Compliance with instruction*

- 30 (2) If the Administrator receives an instruction under paragraph (1)(c),
31 the Administrator must take such steps as are required by the
32 regulations to comply with the instruction.

- 1 (3) The Registry must set out a record of the instruction under
2 paragraph (1)(c).

3 **39 Kyoto rules**

- 4 (1) The regulations may make provision for, or in relation to, giving
5 effect to the Kyoto rules, so far as the Kyoto rules relate to:
- 6 (a) the transfer of a Kyoto unit from a Registry account to a
7 foreign account; or
 - 8 (b) the transfer of a Kyoto unit from a foreign account to a
9 Registry account; or
 - 10 (c) the transfer of a Kyoto unit from a Registry account to a
11 Commonwealth Registry account; or
 - 12 (d) the issue of a Kyoto unit; or
 - 13 (e) the conversion of an assigned amount unit, or a removal unit,
14 to an emission reduction unit.
- 15 (2) Regulations made for the purposes of subsection (1) may:
- 16 (a) prevent, restrict or limit the transfer of Kyoto units from a
17 Registry account to:
 - 18 (i) a foreign account; or
 - 19 (ii) a voluntary cancellation account; or
 - 20 (b) prevent, restrict or limit the transfer of Kyoto units from a
21 foreign account to a Registry account; or
 - 22 (c) prevent, restrict or limit the giving of instructions under
23 paragraph 38(1)(c).
- 24 (3) Subsection (2) does not limit subsection (1).

25 **40 Carry-over restrictions**

26 *Kyoto units for which carry-over is permitted*

- 27 (1) The regulations may make provision for, or in relation to, the
28 following matters:
- 29 (a) the identification of:
 - 30 (i) assigned amount units in Registry accounts; or

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- 1 (ii) certified emission reductions (other than temporary
2 certified emission reductions or long-term certified
3 emission reductions) in Registry accounts; or
4 (iii) emission reduction units (other than emission reduction
5 units that have been converted from removal units) in
6 Registry accounts;
7 as Kyoto units for which carry-over is permitted subject to
8 such limits or restrictions (if any) as are specified in the
9 regulations;
10 (b) the procedures for the carry-over of such Kyoto units;
11 (c) requiring the Administrator to transfer from the relevant
12 Registry account to a mandatory cancellation account any
13 such Kyoto units that have not been carried over in
14 accordance with those procedures.

15 *Kyoto units for which carry-over is not permitted*

- 16 (2) The regulations may make provision for, or in relation to, the
17 following matters:
18 (a) the identification of Kyoto units for which carry-over is not
19 permitted;
20 (b) requiring the Administrator to transfer from the relevant
21 Registry account to a mandatory cancellation account any
22 such Kyoto units held in the Registry account at a time
23 ascertained in accordance with the regulations.
24 (3) Regulations made for the purposes of paragraph (2)(a) must
25 identify the following units issued in relation to the relevant
26 commitment period as units for which carry-over is not permitted:
27 (a) removal units;
28 (b) temporary certified emission reductions;
29 (c) long-term certified emission reductions;
30 (d) emission reduction units that have been converted from
31 removal units.

32 *Kyoto rules*

- 33 (4) Regulations made for the purposes of this section must not be
34 inconsistent with the Kyoto rules.

41 Commitment period reserve

- 1
- 2 (1) The regulations may make provision for, or in relation to, the
3 management of Australia's commitment period reserve.
- 4 (2) Regulations made for the purposes of subsection (1) may prevent,
5 restrict or limit the transfer of Kyoto units from a Registry account
6 to:
7 (a) a foreign account; or
8 (b) a voluntary cancellation account.
- 9 (3) Regulations made for the purposes of subsection (1) may prevent,
10 restrict or limit the giving of instructions, under paragraph
11 154(1)(b) of the *Carbon Credits (Carbon Farming Initiative) Act*
12 *2011*, for the transfer of Kyoto Australian carbon credit units.
- 13 (4) Regulations made for the purposes of subsection (1) may prevent,
14 restrict or limit the giving of instructions under paragraph
15 157(1)(b) of the *Carbon Credits (Carbon Farming Initiative) Act*
16 *2011*.
- 17 (5) Regulations made for the purposes of subsection (1) may prevent,
18 restrict or limit the giving of instructions under paragraph 38(1)(c).

**42 Cancellation of temporary certified emission reductions or
long-term certified emission reductions***Scope*

- 19
- 20
- 21
- 22 (1) This section applies if:
23 (a) a person is the holder of a Registry account in which there is
24 an entry for a temporary certified emission reduction or a
25 long-term certified emission reduction; and
26 (b) the temporary certified emission reduction or long-term
27 certified emission reduction expires.

Transfer to mandatory cancellation account

- 28
- 29 (2) The Administrator must, in accordance with the regulations,
30 transfer the temporary certified emission reduction or long-term
31 certified emission reduction to a mandatory cancellation account.

Section 43

1 **43 Replacement of long-term certified emission reductions**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) a person is the holder of a Registry account in which there is
- 5 an entry for a long-term certified emission reduction; and
- 6 (b) under the regulations, the person is required to replace the
- 7 long-term certified emission reduction by a particular time
- 8 ascertained in accordance with the regulations; and
- 9 (c) the person breaches that requirement.

10 *Transfer to mandatory cancellation account*

- 11 (2) The Administrator must, in accordance with the regulations,
- 12 transfer the long-term certified emission reduction to a mandatory
- 13 cancellation account.

14 *Replacement of long-term certified emission reduction*

- 15 (3) For the purposes of this section, if a long-term certified emission
- 16 reduction relates to a clean development mechanism project, the
- 17 **replacement** by the person of the long-term certified emission
- 18 reduction consists of instructing the Administrator under section 34
- 19 to transfer:
- 20 (a) an assigned amount unit; or
- 21 (b) a removal unit; or
- 22 (c) an emission reduction unit; or
- 23 (d) a certified emission reduction (other than a temporary
- 24 certified emission reduction or a long-term certified emission
- 25 reduction); or
- 26 (e) a long-term certified emission reduction relating to the
- 27 project;
- 28 from a Registry account kept by the person to whichever of the
- 29 following accounts is taken, under the regulations, to be the
- 30 appropriate account:
- 31 (f) the long-term certified emission reduction replacement
- 32 (storage reversal) account;

- 1 (g) the long-term certified emission reduction replacement
2 (non-certification) account.

3 *Identification of long-term certified emission reductions for which*
4 *replacement is required*

- 5 (4) Regulations made for the purposes of paragraph (1)(b) may make
6 provision for, or in relation to, the identification of long-term
7 certified emission reductions for which replacement is required.

8 **44 Restrictions on transfer of Kyoto units to a Commonwealth**
9 **Registry account**

10 The regulations may prevent, restrict or limit the transfer of Kyoto
11 units from:

- 12 (a) a Registry account; or
13 (b) a foreign account;
14 to a Commonwealth Registry account.

15 **45 A registered Kyoto unit is personal property for certain purposes**

16 *Scope*

- 17 (1) This section applies if there is an entry for a Kyoto unit in a
18 Registry account.

19 *Personal property*

- 20 (2) For each of the following purposes:
21 (a) the purposes of the *Bankruptcy Act 1966*;
22 (b) the purposes of Chapter 5 of the *Corporations Act 2001*;
23 (c) the purposes of the law relating to wills, intestacy and
24 deceased estates;
25 (d) a prescribed purpose;
26 the unit is personal property and, subject to section 47, is
27 transmissible by will and by devolution by operation of law.

Section 46

1 **46 Equitable interests in relation to a Kyoto unit**

- 2 (1) This Act does not affect:
- 3 (a) the creation of; or
- 4 (b) any dealings with; or
- 5 (c) the enforcement of;
- 6 equitable interests in relation to a Kyoto unit.
- 7 (2) Subsection (1) is enacted for the avoidance of doubt.

8 **47 Transmission of registered Kyoto units by operation of law etc.**

9 *Scope*

- 10 (1) This section applies if:
- 11 (a) under section 45, a Kyoto unit is personal property for a
- 12 particular purpose; and
- 13 (b) the unit is transmitted from a person (the *transferor*) to
- 14 another person (the *transferee*) by any lawful means for that
- 15 purpose.

16 *Declaration of transmission*

- 17 (2) The transferee must, within 90 days after the transmission, give the
- 18 Administrator:
- 19 (a) a declaration of transmission; and
- 20 (b) such evidence of transmission as is specified in the
- 21 regulations.
- 22 (3) A declaration of transmission must be made in accordance with the
- 23 regulations.
- 24 (4) If the transferee does not already have a Registry account, the
- 25 declaration of transmission must be accompanied by a request
- 26 under regulations made for the purposes of subsection 10(1) for the
- 27 Administrator to open a Registry account in the name of the
- 28 transferee.

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1 (5) If the Administrator is satisfied that special circumstances warrant
2 the extension of the 90-day period mentioned in subsection (2), the
3 Administrator may extend that period.

4 (6) The Administrator may exercise the power conferred by
5 subsection (5):
6 (a) on written application being made to the Administrator by the
7 transferee; or
8 (b) on the Administrator's own initiative.

9 *Transfer of unit—transferee already has a Registry account*

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

14 *Transfer of unit—transferee does not have a Registry account*

15 (8) If:
16 (a) the transferee does not already have a Registry account; and
17 (b) in accordance with the request under regulations made for the
18 purposes of subsection 10(1), the Administrator has opened a
19 Registry account in the name of the transferee;
20 the Administrator must, as soon as practicable after opening the
21 Registry account, transfer the unit from the relevant Registry
22 account kept by the transferor to the Registry account kept by the
23 transferee.

24 *Record*

25 (9) If the Administrator transfers the unit under subsection (7) or (8),
26 the Registry must set out a record of the declaration of
27 transmission.

28 *When the transferee is the Commonwealth*

29 (10) If the transferee is the Commonwealth, the Minister may give:
30 (a) the declaration of transmission; and
31 (b) the evidence mentioned in paragraph (2)(b);

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1 on behalf of the transferee.

2 *Notification*

3 (11) If:

4 (a) the Administrator decides to:

5 (i) extend the 90-day period mentioned in subsection (2);

6 or

7 (ii) refuse to extend the 90-day period mentioned in
8 subsection (2); and

9 (b) the Administrator made the decision in response to an
10 application;

11 the Administrator must give written notice of the decision to the
12 applicant.
13

Part 4—Non-Kyoto international emissions units**48 Simplified outline**

The following is a simplified outline of this Part:

- This Part sets out rules about dealings with non-Kyoto international emissions units.

49 Entries for non-Kyoto international emissions units

An entry for a non-Kyoto international emissions unit in a Registry account is to consist of the serial number (however described) of the unit.

50 Transfer of non-Kyoto international emissions units

- (1) For the purposes of this Act, if there is an entry for a non-Kyoto international emissions 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
 - (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; and
 - (c) the *transfer* of the unit from the first Registry account to a foreign account kept by another person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and

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- 1 (ii) the making of an entry for the unit in the foreign
2 account kept by the other person; and
3 (d) the *transfer* of the unit from the first Registry account to a
4 foreign account kept by the first person consists of:
5 (i) the removal of the entry for the unit from the first
6 Registry account; and
7 (ii) the making of an entry for the unit in the foreign
8 account kept by the first person.
- 9 (2) For the purposes of this Act, if there is an entry for a non-Kyoto
10 international emissions unit in a foreign account, a *transfer* of the
11 unit from the foreign account to a Registry account consists of:
12 (a) the removal of the entry for the unit from the foreign account;
13 and
14 (b) the making of an entry for the unit in the Registry account.

15 **51 Domestic transfers of non-Kyoto international emissions units**

- 16 (1) If a person (the *first person*) is the registered holder of one or more
17 non-Kyoto international emissions units, the person may, by
18 electronic notice transmitted to the Administrator, instruct the
19 Administrator to transfer the units from the relevant Registry
20 account kept by the person (the *first Registry account*) to:
21 (a) a Registry account kept by another person; or
22 (b) another Registry account kept by the first person.
- 23 (2) An instruction under subsection (1) must set out:
24 (a) the account number of the first Registry account; and
25 (b) the account number of the Registry account mentioned in
26 paragraph (1)(a) or (b); and
27 (c) such other information as is specified in the regulations.

28 *Compliance with instruction*

- 29 (3) If:
30 (a) the Administrator receives an instruction under
31 subsection (1); and
32 (b) the conditions (if any) specified in the regulations are
33 satisfied;

- 1 the Administrator must give effect to the instruction as soon as
2 practicable after receiving it.
- 3 (4) If the Administrator gives effect to an instruction under
4 subsection (1), the Registry must set out a record of the instruction.
- 5 (5) If the first person is the Commonwealth, the Minister may give an
6 instruction under subsection (1) on behalf of the first person.

7 **52 Outgoing international transfers of non-Kyoto international**
8 **emissions units**

- 9 (1) If a person (the *first person*) is the registered holder of one or more
10 non-Kyoto international emissions units, the person may, by
11 electronic notice transmitted to the Administrator, instruct the
12 Administrator to transfer the units from the relevant Registry
13 account kept by the person (the *first Registry account*) to:
14 (a) a foreign account kept by another person; or
15 (b) a foreign account kept by the first person.
- 16 (2) An instruction under subsection (1) must set out:
17 (a) the account number of the relevant Registry account kept by
18 the first person; and
19 (b) such other information as is specified in the regulations.

20 *Compliance with instruction*

- 21 (3) If:
22 (a) the Administrator receives an instruction under
23 subsection (1); and
24 (b) the conditions (if any) specified in the regulations are
25 satisfied;
26 the Administrator must take such steps as are required by the
27 regulations.
- 28 (4) Regulations made for the purposes of subsection (3) may require
29 the Administrator to remove the entry for the unit or units from the
30 relevant Registry account.
- 31 (5) Subsection (4) does not limit subsection (3).

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1 (6) If the Administrator takes steps under subsection (3) in relation to
2 an instruction, the Registry must set out a record of the instruction.

3 (7) If the first person is the Commonwealth, the Minister may give an
4 instruction under subsection (1) on behalf of the first person.

5 **53 Incoming international transfers of non-Kyoto international**
6 **emissions units**

7 (1) If:

8 (a) the Administrator receives an instruction for the transfer of a
9 non-Kyoto international emissions unit from a foreign
10 account; and

11 (b) the conditions (if any) specified in the regulations are
12 satisfied;

13 the Administrator must make an entry for the non-Kyoto
14 international emissions unit in the relevant Registry account.

15 (2) However, the Administrator may refuse to make an entry for the
16 non-Kyoto international emissions unit in the relevant Registry
17 account if the Administrator has reasonable grounds to suspect that
18 the instruction is fraudulent.

19 (3) If the Administrator decides to refuse to make an entry for the
20 non-Kyoto international emissions unit in the relevant Registry
21 account, the Administrator must give written notice of the decision
22 to the person who gave the instruction.

23 **54 A registered non-Kyoto international emissions unit is personal**
24 **property for certain purposes**

25 *Scope*

26 (1) This section applies if there is an entry for a non-Kyoto
27 international emissions unit in a Registry account.

28 *Personal property*

29 (2) For each of the following purposes:

30 (a) the purposes of the *Bankruptcy Act 1966*;

- 1 (b) the purposes of Chapter 5 of the *Corporations Act 2001*;
 2 (c) the purposes of the law relating to wills, intestacy and
 3 deceased estates;
 4 (d) a prescribed purpose;
 5 the unit is personal property and, subject to section 56 of this Act,
 6 is transmissible by will and by devolution by operation of law.

7 **55 Equitable interests in relation to a non-Kyoto international**
 8 **emissions unit**

- 9 (1) This Act does not affect:
 10 (a) the creation of; or
 11 (b) any dealings with; or
 12 (c) the enforcement of;
 13 equitable interests in relation to a non-Kyoto international
 14 emissions unit.
 15 (2) Subsection (1) is enacted for the avoidance of doubt.

16 **56 Transmission of registered non-Kyoto international emissions**
 17 **units by operation of law etc.**

18 *Scope*

- 19 (1) This section applies if:
 20 (a) under section 54, a non-Kyoto international emissions unit is
 21 personal property for a particular purpose; and
 22 (b) the unit is transmitted from a person (the *transferor*) to
 23 another person (the *transferee*) by any lawful means for that
 24 purpose.

25 *Declaration of transmission*

- 26 (2) The transferee must, within 90 days after the transmission, give the
 27 Administrator:
 28 (a) a declaration of transmission; and
 29 (b) such evidence of transmission as is specified in the
 30 regulations.

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1 (3) A declaration of transmission must be made in accordance with the
2 regulations.

3 (4) If the transferee does not already have a Registry account, the
4 declaration of transmission must be accompanied by a request
5 under regulations made for the purposes of subsection 10(1) for the
6 Administrator to open a Registry account in the name of the
7 transferee.

8 (5) If the Administrator is satisfied that special circumstances warrant
9 the extension of the 90-day period mentioned in subsection (2), the
10 Administrator may extend that period.

11 (6) The Administrator may exercise the power conferred by
12 subsection (5):

13 (a) on written application being made to the Administrator by the
14 transferee; or

15 (b) on the Administrator's own initiative.

16 *Transfer of unit—transferee already has a Registry account*

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

21 *Transfer of unit—transferee does not have a Registry account*

22 (8) If:

23 (a) the transferee does not already have a Registry account; and

24 (b) in accordance with the request under regulations made for the
25 purposes of subsection 10(1), the Administrator has opened a
26 Registry account in the name of the transferee;

27 the Administrator must, as soon as practicable after opening the
28 Registry account, transfer the unit from the relevant Registry
29 account kept by the transferor to the Registry account kept by the
30 transferee.

1 *Record*

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

5 *When the transferee is the Commonwealth*

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

10 *Notification*

- 11 (11) If:
12 (a) the Administrator decides to:
13 (i) extend the 90-day period mentioned in subsection (2);
14 or
15 (ii) refuse to extend the 90-day period mentioned in
16 subsection (2); and
17 (b) the Administrator made the decision in response to an
18 application;
19 the Administrator must give written notice of the decision to the
20 applicant.

21 **57 Regulations about non-Kyoto international emissions units**

22 The regulations may make further provision in relation to
23 non-Kyoto international emissions units.
24

Section 58

1 **Part 5—Publication of information**
2

3 **58 Simplified outline**

4 The following is a simplified outline of this Part:

- | |
|---|
| <p>5 • The Administrator must publish certain information about:</p> <p>6 (a) the holders of Registry accounts; and</p> <p>7 (b) Kyoto units; and</p> <p>8 (c) non-Kyoto international emissions units.</p> |
|---|

9 **59 Information about holders of Registry accounts**

10 The Administrator must:

- 11 (a) publish on the Administrator's website:
- 12 (i) the name of each person who has a Registry account;
- 13 and
- 14 (ii) the person's address last known to the Administrator;
- 15 and
- 16 (b) keep that information up-to-date.

17 **60 Kyoto information**

- 18 (1) The regulations may make provision for, or in relation to, requiring
- 19 the Administrator to publish on the Administrator's website
- 20 information that a provision of the Kyoto rules requires Australia's
- 21 national registry to make publicly available.
- 22 (2) The regulations may require the Administrator to:
- 23 (a) publish on the Administrator's website the total number of
- 24 specified Kyoto units for which there are entries in Registry
- 25 accounts; and
- 26 (b) keep that information up-to-date.

61 Publication of concise description of the characteristics of eligible international emissions units*Kyoto units*

- (1) The Administrator must:
- (a) within 30 days after the commencement of this section, publish on the Administrator's website a statement setting out a concise description of the characteristics of each of the following types of eligible international emissions units:
 - (i) certified emission reductions (other than a temporary certified emission reduction or a long-term certified emission reduction);
 - (ii) emission reduction units;
 - (iii) removal units; and
 - (b) keep that statement up-to-date.

- (2) The Administrator must:
- (a) within 30 days after the commencement of regulations made for the purposes of paragraph (d) of the definition of ***eligible international emissions unit*** in section 4, publish on the Administrator's website a statement setting out a concise description of the characteristics of units prescribed by those regulations; and
 - (b) keep that statement up-to-date.

Non-Kyoto units

- (3) The Administrator must:
- (a) within 30 days after the commencement of regulations made for the purposes of paragraph (a) of the definition of ***non-Kyoto international emissions unit*** in section 4, publish on the Administrator's website a statement setting out a concise description of the characteristics of units prescribed by those regulations; and
 - (b) keep that statement up-to-date.
- (4) The Administrator must:

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- 1 (a) within 30 days after the commencement of regulations made
2 for the purposes of paragraph (b) of the definition of
3 ***non-Kyoto international emissions unit*** in section 4, publish
4 on the Administrator's website a statement setting out a
5 concise description of the characteristics of units prescribed
6 by those regulations; and
7 (b) keep that statement up-to-date.

8 **62 Information about number of voluntarily cancelled Kyoto units**

9 As soon as practicable after one or more Kyoto units held by a
10 person are transferred under section 65 to a voluntary cancellation
11 account, the Administrator must publish on the Administrator's
12 website:

- 13 (a) the name of the person; and
14 (b) the total number of Kyoto units transferred.

15 **63 Information about number of voluntarily cancelled non-Kyoto
16 international emissions units**

17 As soon as practicable after one or more non-Kyoto international
18 emissions units held by a person are cancelled under section 66, the
19 Administrator must publish on the Administrator's website:

- 20 (a) the name of the person; and
21 (b) the total number of non-Kyoto international emissions units
22 cancelled.
23

Part 6—Voluntary cancellation of emissions units**64 Simplified outline**

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more Kyoto units, the person may request the Administrator to transfer to a voluntary cancellation account any or all of those units.
- If a person is the registered holder of one or more non-Kyoto international emissions units, the person may request the Administrator to cancel any or all of those units.

65 Voluntary cancellation of Kyoto units

- (1) If a person is the registered holder of one or more Kyoto units, the person may, by electronic notice transmitted to the Administrator, request the Administrator to transfer to a voluntary cancellation account any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the Kyoto unit or units that are to be transferred to the voluntary cancellation account; and
 - (b) 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 Kyoto unit or units that are to be transferred to the voluntary cancellation account.
- (3) If:
 - (a) a person requests that a Kyoto unit be transferred to a voluntary cancellation account; and
 - (b) the Administrator is satisfied that the transfer of the unit from the person's Registry account to the voluntary cancellation account would not breach regulations made for the purposes of section 39 (Kyoto rules); and

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- 1 (c) the Administrator is satisfied that the transfer of the unit from
2 the person's Registry account to the voluntary cancellation
3 account would not breach regulations made for the purposes
4 of section 41 (commitment period reserve);
5 the Administrator must comply with the request as soon as
6 practicable after receiving it.
- 7 (4) The Registry must set out a record of each notice under
8 subsection (1).

9 **66 Voluntary cancellation of non-Kyoto international emissions**
10 **units**

- 11 (1) If a person is the registered holder of one or more non-Kyoto
12 international emissions units, the person may, by electronic notice
13 transmitted to the Administrator, request the Administrator to
14 cancel any or all of those units.
- 15 (2) A notice under subsection (1) must:
- 16 (a) specify the non-Kyoto international emissions unit or units
17 that are to be cancelled; and
18 (b) specify the account number or account numbers of the
19 person's Registry account, or the person's Registry accounts,
20 in which there is an entry or entries for the Australian carbon
21 credit unit or units that are to be cancelled.
- 22 (3) If the Administrator receives a notice under subsection (1) in
23 relation to a non-Kyoto international emissions unit:
- 24 (a) if the regulations require the Administrator to cancel the
25 unit—the Administrator must cancel the unit; and
26 (b) if the regulations require the Administrator to take specified
27 action in relation to the unit—the Administrator must take
28 that action; and
29 (c) the Administrator must remove the entry for the unit from the
30 person's Registry account in which there is an entry for the
31 unit.
- 32 (4) The Registry must set out a record of each notice under
33 subsection (1).
34

1 **Part 7—Civil penalty orders**

3 **67 Simplified outline**

4 The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">5 • Pecuniary penalties are payable for contraventions of civil6 penalty provisions. |
|---|

7 **68 References to Court**

8 In this Part:

9 **Court** means:

- 10 (a) the Federal Court; or
- 11 (b) a court of a State or Territory that has jurisdiction in relation
- 12 to matters arising under this Act.

13 **69 Civil penalty orders**

- 14 (1) If a Court is satisfied that a person has contravened a civil penalty
- 15 provision, the Court may order the person to pay the
- 16 Commonwealth a pecuniary penalty.
- 17 (2) An order under subsection (1) is to be known as a **civil penalty**
- 18 **order**.

19 *Determining amount of pecuniary penalty*

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

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- 1 (e) the extent to which the person has co-operated with the
2 authorities; and
3 (f) if the person is a body corporate:
4 (i) the level of the employees, officers or agents of the
5 body corporate involved in the contravention; and
6 (ii) whether the body corporate exercised due diligence to
7 avoid the contravention; and
8 (iii) whether the body corporate had a corporate culture
9 conducive to compliance.
- 10 (4) The pecuniary penalty payable under subsection (1) by a body
11 corporate must not exceed:
12 (a) in the case of a contravention of subsection 26(1), (2) or
13 (5)—500 penalty units for each contravention; or
14 (b) otherwise—10,000 penalty units for each contravention.
- 15 (5) The pecuniary penalty payable under subsection (1) by a person
16 other than a body corporate must not exceed:
17 (a) in the case of a contravention of subsection 26(1), (2) or
18 (5)—100 penalty units for each contravention; or
19 (b) otherwise—2,000 penalty units for each contravention.

20 *Civil enforcement of penalty*

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

26 **70 Who may apply for a civil penalty order**

- 27 (1) Only the Administrator may apply for a civil penalty order.
- 28 (2) Subsection (1) does not exclude the operation of the *Director of*
29 *Public Prosecutions Act 1983*.

71 Two or more proceedings may be heard together

1
2 The Court may direct that 2 or more proceedings for civil penalty
3 orders are to be heard together.

72 Time limit for application for an order

4
5 Proceedings for a civil penalty order may be started no later than 6
6 years after the contravention.

73 Civil evidence and procedure rules for civil penalty orders

7
8 The Court must apply the rules of evidence and procedure for civil
9 matters when hearing proceedings for a civil penalty order.

74 Civil proceedings after criminal proceedings

10
11 The Court must not make a civil penalty order against a person for
12 a contravention of a civil penalty provision if the person has been
13 convicted of an offence constituted by conduct that is substantially
14 the same as the conduct constituting the contravention.

75 Criminal proceedings during civil proceedings

- 15
16 (1) Proceedings for a civil penalty order against a person for a
17 contravention of a civil penalty provision are stayed if:
18 (a) criminal proceedings are started or have already been started
19 against the person for an offence; and
20 (b) the offence is constituted by conduct that is substantially the
21 same as the conduct alleged to constitute the contravention.
- 22 (2) The proceedings for the order may be resumed if the person is not
23 convicted of the offence. Otherwise, the proceedings for the order
24 are dismissed.

76 Criminal proceedings after civil proceedings

25
26 Criminal proceedings may be started against a person for conduct
27 that is substantially the same as conduct constituting a

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1 contravention of a civil penalty provision regardless of whether a
2 civil penalty order has been made against the person.

3 **77 Evidence given in proceedings for a civil penalty order not**
4 **admissible in criminal proceedings**

5 Evidence of information given, or evidence of production of
6 documents, by an individual is not admissible in criminal
7 proceedings against the individual if:

- 8 (a) the individual previously gave the evidence or produced the
9 documents in proceedings for a civil penalty order against the
10 individual for a contravention of a civil penalty provision
11 (whether or not the order was made); and
12 (b) the conduct alleged to constitute the offence is substantially
13 the same as the conduct that was claimed to constitute the
14 contravention.

15 However, this does not apply to a criminal proceeding in respect of
16 the falsity of the evidence given by the individual in the
17 proceedings for the civil penalty order.

18 **78 Mistake of fact**

19 (1) A person is not liable to have a civil penalty order made against the
20 person for a contravention of a civil penalty provision if:

- 21 (a) at or before the time of the conduct constituting the
22 contravention, the person:
23 (i) considered whether or not facts existed; and
24 (ii) was under a mistaken but reasonable belief about those
25 facts; and
26 (b) had those facts existed, the conduct would not have
27 constituted a contravention of the civil penalty provision.

28 (2) For the purposes of subsection (1), a person may be regarded as
29 having considered whether or not facts existed if:

- 30 (a) the person had considered, on a previous occasion, whether
31 those facts existed in the circumstances surrounding that
32 occasion; and
33 (b) the person honestly and reasonably believed that the
34 circumstances surrounding the present occasion were the

1 same, or substantially the same, as those surrounding the
2 previous occasion.

3 (3) A person who wishes to rely on subsection (1) or (2) in
4 proceedings for a civil penalty order bears an evidential burden in
5 relation to that matter.

6 **79 State of mind**

7 *Scope*

8 (1) This section applies to proceedings for a civil penalty order against
9 a person for a contravention of any of the following civil penalty
10 provisions:

- 11 (a) subsection 26(1);
- 12 (b) subsection 26(2);
- 13 (c) subsection 27(4);.

14 *State of mind*

15 (2) In the proceedings, it is not necessary to prove:

- 16 (a) the person's intention; or
- 17 (b) the person's knowledge; or
- 18 (c) the person's recklessness; or
- 19 (d) the person's negligence; or
- 20 (e) any other state of mind of the person.

21 (3) Subsection (2) does not affect the operation of section 78.

22 **80 Continuing contraventions**

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

28 (2) A person who contravenes subsection 27(4), so far as that
29 subsection relates to a requirement mentioned in subsection 27(2),
30 commits a separate contravention of that provision in respect of

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1 each day (including a day of the making of a relevant civil penalty
2 order or any subsequent day) during which the contravention
3 continues.

4 (3) The pecuniary penalty payable under subsection 69(1) for such a
5 separate contravention in respect of a particular day must not
6 exceed 5% of the maximum pecuniary penalty that could have
7 been imposed for the contravention if subsection (2) of this section
8 had not been enacted.
9

Part 8—Review of decisions

81 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of delegates of the Administrator may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the Administrator.
- Certain decisions of the Administrator may be reviewed by the Administrative Appeals Tribunal.

82 Reviewable decisions

For the purposes of this Act, each of the following decisions of the Administrator is a *reviewable decision*:

Reviewable decisions

Item	Decision
------	----------

1	A decision to refuse to extend a period under subsection 47(5).
2	A decision to refuse to make an entry in a Registry account under section 53.
3	A decision to refuse to extend a period under subsection 56(5).
4	A decision under regulations made for the purposes of subsection 10(1) to refuse to open a Registry account.
5	A decision under regulations made for the purposes of subsection 16(1) to close a Registry account.
6	A decision under section 19 to alter the Registry.
7	A decision to refuse to alter the Registry under section 19.
8	A decision under section 20 or 21 to make an alteration to the Registry.
9	A decision to refuse to make an alteration to the Registry under section 20 or 21.

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1 **83 Applications for reconsideration of decisions made by delegates**
2 **of the Administrator**

3 *Scope*

- 4 (1) This section applies to a reviewable decision if the decision is
5 made by a delegate of the Administrator.

6 *Application*

- 7 (2) A person affected by a reviewable decision who is dissatisfied with
8 the decision may apply to the Administrator for the Administrator
9 to reconsider the decision.

- 10 (3) The application must:

- 11 (a) be in a form approved in writing by the Administrator; and
12 (b) set out the reasons for the application; and
13 (c) be accompanied by the fee (if any) specified in the
14 regulations.

- 15 (4) The application must be made within:

- 16 (a) 28 days after the applicant is informed of the decision; or
17 (b) if, either before or after the end of that period of 28 days, the
18 Administrator extends the period within which the
19 application may be made—the extended period.

- 20 (5) An approved form of an application may provide for verification
21 by statutory declaration of statements in applications.

- 22 (6) A fee specified under paragraph (3)(c) must not be such as to
23 amount to taxation.

24 **84 Reconsideration by the Administrator**

- 25 (1) Upon receiving such an application, the Administrator must:

- 26 (a) reconsider the decision; and
27 (b) affirm, vary or revoke the decision.

- 28 (2) The Administrator's decision on reconsideration of a decision has
29 effect as if it had been made under the provision under which the
30 original decision was made.

- 1 (3) The Administrator must give to the applicant a written notice
2 stating the Administrator's decision on the reconsideration.
- 3 (4) Within 28 days after making the decision on the reconsideration,
4 the Administrator must give the applicant a written statement of the
5 Administrator's reasons for the decision.

6 **85 Deadline for reconsideration**

- 7 (1) The Administrator must make his or her decision on
8 reconsideration of a decision within 90 days after receiving an
9 application for reconsideration.
- 10 (2) The Administrator is taken, for the purposes of this Part, to have
11 made a decision affirming the original decision if he or she has not
12 informed the applicant of his or her decision on the reconsideration
13 before the end of the period of 90 days.

14 **86 Review by the Administrative Appeals Tribunal**

- 15 (1) Applications may be made to the Administrative Appeals Tribunal
16 to review a reviewable decision if the Administrator has affirmed
17 or varied the decision under section 84.
- 18 (2) Applications may be made to the Administrative Appeals Tribunal
19 to review a reviewable decision if the decision was not made by a
20 delegate of the Administrator.
21

1 **Part 9—Miscellaneous**
2

3 **87 Computerised decision-making**

4 (1) The Administrator may, by legislative instrument, arrange for the
5 use, under the Administrator's control, of computer programs for
6 any purposes for which the Administrator may, or must, under this
7 Act or the regulations:

- 8 (a) make a decision; or
9 (b) exercise any power or comply with any obligation; or
10 (c) do anything else related to making a decision or exercising a
11 power or complying with an obligation.

12 (2) For the purposes of this Act and the regulations, the Administrator
13 is taken to have:

- 14 (a) made a decision; or
15 (b) exercised a power or complied with an obligation; or
16 (c) done something else related to the making of a decision or
17 the exercise of a power or the compliance with an obligation;
18 that was made, exercised, complied with or done by the operation
19 of a computer program under such an arrangement.

20 **88 Administrator's power to require further information**

21 If:

- 22 (a) a person makes a request to the Administrator under the
23 regulations; and
24 (b) the Administrator exercises a power, under another provision
25 of the regulations, to require the person to give the
26 Administrator further information in connection with the
27 request;

28 the Administrator:

- 29 (c) must ensure that the further information is relevant to the
30 matter to which the request relates; and
31 (d) must ensure that the power is exercised in a reasonable way.

89 Delegation by the Minister

- 1
- 2 (1) The Minister may, by writing, delegate any or all of his or her
- 3 functions or powers under this Act or the regulations to:
- 4 (a) the Secretary; or
- 5 (b) an SES employee, or acting SES employee, in the
- 6 Department.

7 Note: The expressions *SES employee* and *acting SES employee* are defined

8 in the *Acts Interpretation Act 1901*.

- 9 (2) In exercising powers under a delegation, the delegate must comply
- 10 with any directions of the Minister.
- 11 (3) Subsection (1) does not apply to a power to make, vary or revoke a
- 12 legislative instrument.

90 Delegation by the Secretary

- 13
- 14 (1) The Secretary may, by writing, delegate any or all of his or her
- 15 functions or powers under this Act to an SES employee, or acting
- 16 SES employee, in the Department.

17 Note: The expressions *SES employee* and *acting SES employee* are defined

18 in the *Acts Interpretation Act 1901*.

- 19 (2) In exercising powers under a delegation, the delegate must comply
- 20 with any directions of the Secretary.

91 Liability for damages

21

22 None of the following:

- 23 (a) the Minister;
- 24 (b) a delegate of the Minister;
- 25 (c) the Secretary;
- 26 (d) a delegate of the Secretary;
- 27 (e) the Administrator;
- 28 (f) a delegate of the Administrator;

29 is liable to an action or other proceeding for damages for, or in

30 relation to, an act or matter in good faith done or omitted to be

31 done:

Section 92

- 1 (g) in the performance or purported performance of any function;
2 or
3 (h) in the exercise or purported exercise of any power;
4 conferred by this Act or the regulations.

5 **92 Executive power of the Commonwealth**

6 This Act does not, by implication, limit the executive power of the
7 Commonwealth.

8 **93 Notional payments by the Commonwealth**

- 9 (1) The purpose of this section is to ensure that amounts payable under
10 this Act or the regulations are notionally payable by the
11 Commonwealth (or parts of the Commonwealth).
12 (2) The Minister responsible for administering the *Financial*
13 *Management and Accountability Act 1997* may give written
14 directions for the purposes of this section, including directions
15 relating to the transfer of amounts within, or between, accounts
16 operated by the Commonwealth.

17 **94 Compensation for acquisition of property**

- 18 (1) If the operation of this Act or the regulations would result in an
19 acquisition of property from a person otherwise than on just terms,
20 the Commonwealth is liable to pay a reasonable amount of
21 compensation to the person.
22 (2) If the Commonwealth and the person do not agree on the amount
23 of the compensation, the person may institute proceedings in a
24 court of competent jurisdiction for the recovery from the
25 Commonwealth of such reasonable amount of compensation as the
26 court determines.
27 (3) In this section:
28 *acquisition of property* has the same meaning as in paragraph
29 51(xxxi) of the Constitution.

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

3 **95 Prescribing matters by reference to other instruments**

- 4 (1) The regulations may make provision in relation to a matter by
5 applying, adopting or incorporating, with or without modification,
6 a matter contained in an instrument or writing:
7 (a) as in force or existing at a particular time; or
8 (b) as in force or existing from time to time.
- 9 (2) Subsection (1) has effect despite anything in subsection 14(2) of
10 the *Legislative Instruments Act 2003*.
- 11 (3) If the regulations make provision in relation to a matter by
12 applying, adopting or incorporating, with or without modification,
13 a matter contained in an instrument or writing, the Administrator
14 must ensure that the text of the matter applied, adopted or
15 incorporated is published on the Administrator's website.
- 16 (4) Subsection (3) does not apply if the publication would infringe
17 copyright.

18 **96 Administrative decisions under the regulations**

19 The regulations may make provision in relation to a matter by
20 conferring a power to make a decision of an administrative
21 character on the Administrator.

22 **97 Regulations**

23 The Governor-General may make regulations prescribing matters:
24 (a) required or permitted by this Act to be prescribed; or
25 (b) necessary or convenient to be prescribed for carrying out or
26 giving effect to this Act.