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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Carbon Credits (Carbon Farming Initiative) Bill 2011**

**No.     , 2011**

*(Climate Change and Energy Efficiency)*

**A Bill for an Act about projects to remove carbon  
dioxide from the atmosphere and projects to avoid  
emissions of greenhouse gases, and for other  
purposes**



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1 **A Bill for an Act about projects to remove carbon**  
2 **dioxide from the atmosphere and projects to avoid**  
3 **emissions of greenhouse gases, and for other**  
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**  
7

8 **1 Short title**

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

Section 2

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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

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>

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

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

### 4 **3 Objects**

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

6 *Climate Change Convention and Kyoto Protocol*

- 7 (2) The first object of this Act is to implement certain obligations that  
8 Australia has under:  
9 (a) the Climate Change Convention; and  
10 (b) the Kyoto Protocol.

11 *Incentives*

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

14 *Carbon abatement*

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

### 20 **4 Simplified outline**

21 The following is a simplified outline of this Act:

- 22 • This Act sets up a scheme for the issue of Australian carbon  
23 credit units in relation to eligible offsets projects.
- 24 • An Australian carbon credit unit is personal property and is  
25 generally transferable.
- 26 • The main eligibility requirements for eligible offsets projects  
27 are as follows:

Section 5

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- (a) the project must be carried out in Australia;
  - (b) the project must be covered by a methodology determination made under this Act.
- A methodology determination must comply with the offsets integrity standards set out in this Act.
  - This Act is administered by the Carbon Credits Administrator.

**5 Definitions**

In this Act:

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

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

*additionality test* has the meaning given by section 41.

*additionality test regulations* means regulations made for the purposes of paragraph 41(1)(a).

*Administrator* means the Carbon Credits Administrator.

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

- (a) an emission of methane from the digestive tract of livestock;
- (b) an emission of:
  - (i) methane; or
  - (ii) nitrous oxide;from the decomposition of:
  - (iii) livestock urine; or
  - (iv) livestock dung;
- (c) an emission of methane from:
  - (i) rice fields; or

- 1 (ii) rice plants;  
 2 (d) an emission of:  
 3 (i) methane; or  
 4 (ii) nitrous oxide;  
 5 from the burning of:  
 6 (iii) savannas; or  
 7 (iv) grasslands;  
 8 (e) an emission of:  
 9 (i) methane; or  
 10 (ii) nitrous oxide;  
 11 from the burning of:  
 12 (iii) crop stubble in fields; or  
 13 (iv) crop residues in fields; or  
 14 (v) sugar cane before harvest;  
 15 (f) an emission of:  
 16 (i) methane; or  
 17 (ii) nitrous oxide;  
 18 from soil.

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

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

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

25 ***applicable methodology determination***, in relation to an offsets  
 26 project, means the methodology determination that is applicable to  
 27 the project.

28 Note: See also sections 124 to 130.

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

31 ***associated provisions*** means the following provisions:

- 32 (a) the provisions of the regulations;

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1 (b) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and  
2 137.2 of the *Criminal Code*, in so far as those sections relate  
3 to:

- 4 (i) this Act; or  
5 (ii) the regulations.

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

- 8 (a) paragraph 13(1)(e);  
9 (b) paragraph 23(1)(d);  
10 (c) paragraph 76(4)(c);  
11 (d) section 214;  
12 (e) section 215.

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

15 ***Australian carbon credit unit*** means a unit issued under  
16 section 147.

17 ***Australian police force*** means:

- 18 (a) the Australian Federal Police; or  
19 (b) a police force or police service of a State or Territory.

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

22 ***baseline*** for an offsets project has a meaning affected by  
23 section 107.

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

26 ***Biodiversity Convention*** means the Convention on Biological  
27 Diversity, done at Rio de Janeiro on 5 June 1992, as amended and  
28 in force for Australia from time to time.

29 Note: The text of the Convention is set out in Australian Treaty Series 1993  
30 No. 32 ([1993] ATS 32). In 2011, the text of a Convention in the  
31 Australian Treaty Series was accessible through the Australian  
32 Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

1            ***carbon dioxide equivalence*** has the same meaning as in the  
2            *National Greenhouse and Energy Reporting Act 2007*.

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

5            ***certificate of entitlement*** means a certificate issued under  
6            section 15.

7            ***certified emission reduction*** has the same meaning as in the  
8            *Australian National Registry of Emissions Units Act 2011*.

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

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

12          ***Climate Change Convention*** means the United Nations  
13          Framework Convention on Climate Change done at New York on  
14          9 May 1992, as amended and in force for Australia from time to  
15          time.

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

20          ***commitment period*** has the same meaning as in the *Australian*  
21          *National Registry of Emissions Units Act 2011*.

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

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

26          ***Commonwealth relinquished units account*** means the  
27          Commonwealth Registry account designated as the  
28          Commonwealth relinquished units account.

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

30            (a) the first crediting period for the project, worked out under  
31            section 69; or

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- 1 (b) a subsequent crediting period for the project, determined  
2 under section 74.

3 **Crown land** means land that is the property of:

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

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

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

20 **Crown lands Minister:**

- 21 (a) in relation to a State—means the Minister of the State who,  
22 under the regulations, is taken to be the Crown lands Minister  
23 of the State; or  
24 (b) in relation to the Northern Territory—means the Minister of  
25 the Northern Territory who, under the regulations, is taken to  
26 be the Crown lands Minister of the Northern Territory; or  
27 (c) in relation to the Australian Capital Territory—means the  
28 Minister of the Australian Capital Territory who, under the  
29 regulations, is taken to be the Crown lands Minister of the  
30 Australian Capital Territory; or  
31 (d) in relation to a Territory other than the Northern Territory or  
32 the Australian Capital Territory—means the person who,  
33 under the regulations, is taken to be the Crown lands Minister  
34 of the Territory.



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

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

7            **Domestic Offsets Integrity Committee** means the committee  
8            established by section 254. This definition does not apply to the  
9            definition of *Interim Domestic Offsets Integrity Committee*.

10          **Domestic Offsets Integrity Committee member** means a member  
11          of the Domestic Offsets Integrity Committee, and includes the  
12          Chair of the Domestic Offsets Integrity Committee.

13          **electronic communication** means a communication by means of  
14          guided and/or unguided electromagnetic energy.

15          **electronic notice transmitted to the Administrator** has the meaning  
16          given by section 7.

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

19          **eligible Kyoto project** has the meaning given by paragraph  
20          27(2)(a).

21          **eligible non-Kyoto project** has the meaning given by paragraph  
22          27(2)(b).

23          **eligible offsets project** has the meaning given by paragraph  
24          27(2)(a) or (b).

25          **eligible voluntary action** means:

- 26            (a) making an application; or  
27            (b) giving information in connection with an application; or  
28            (c) withdrawing an application; or  
29            (d) giving a notice (including an electronic notice); or  
30            (e) making a submission; or  
31            (f) making a request; or  
32            (g) giving information in connection with a request;
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1 to the Administrator, where the application, information, notice,  
2 submission or request is permitted, but not required, to be made,  
3 given or withdrawn, as the case may be, under this Act or the  
4 regulations.

5 **emission** of greenhouse gas means the release of greenhouse gas  
6 into the atmosphere.

7 **emission reduction unit** has the same meaning as in the *Australian*  
8 *National Registry of Emissions Units Act 2011*.

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

11 **engage in conduct** means:

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

14 **entrusted public official** means:

- 15 (a) the Administrator; or  
16 (b) a delegate of the Administrator; or  
17 (c) a person assisting the Administrator under section 250; or  
18 (d) a person whose services are made available to the  
19 Administrator under section 251; or  
20 (e) a person engaged as a consultant under section 252; or  
21 (f) an audit team leader; or  
22 (g) a person assisting an audit team leader; or  
23 (h) a Domestic Offsets Integrity Committee member; or  
24 (i) a person assisting the Domestic Offsets Integrity Committee  
25 under section 269.

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

29 **excluded offsets project** has the meaning given by section 56.

30 **exclusive possession native title land** means native title land,  
31 where the native title confers a right of exclusive possession over  
32 the land.

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

- 2 (a) a director of the body corporate; or  
3 (b) the chief executive officer (however described) of the body  
4 corporate; or  
5 (c) the chief financial officer (however described) of the body  
6 corporate; or  
7 (d) the secretary of the body corporate.

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

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

11 ***foreign account***, when used in relation to an Australian carbon  
12 credit unit, means an account kept within a foreign non-Kyoto  
13 registry.

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

- 15 (a) the region is a colony, territory or protectorate of a foreign  
16 country; or  
17 (b) the region is part of a foreign country; or  
18 (c) the region is under the protection of a foreign country; or  
19 (d) a foreign country exercises jurisdiction or control over the  
20 region; or  
21 (e) a foreign country is responsible for the region's international  
22 relations.

23 ***foreign non-Kyoto registry*** has the same meaning as in the  
24 *Australian National Registry of Emissions Units Act 2011*.

25 ***freehold land rights land*** means land, where:

- 26 (a) a freehold estate exists over the land, and the grant of the  
27 freehold estate took place under a law of a State or a  
28 Territory that makes provision for the grant of such things  
29 only to, or for the benefit of, Aboriginal peoples or Torres  
30 Strait Islanders; or  
31 (b) a freehold estate exists over the land, and the grant of the  
32 freehold estate took place under a law of the Commonwealth  
33 that makes provision for the grant of such things only to, or

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1 for the benefit of, Aboriginal peoples or Torres Strait  
2 Islanders; or  
3 (c) the land is vested in a person, and the vesting took place  
4 under a law of the Commonwealth that makes provision for  
5 the vesting of land only in, or for the benefit of, Aboriginal  
6 peoples or Torres Strait Islanders.

7 **general law land** means land other than:

- 8 (a) Torrens system land; or  
9 (b) Crown land.

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

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

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

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

18 **inspector** means a person appointed as an inspector under  
19 section 196.

20 **Interim Domestic Offsets Integrity Committee** means the  
21 committee that was:

- 22 (a) established under the executive power of the Commonwealth  
23 before the commencement of this section; and  
24 (b) known as the Domestic Offsets Integrity Committee.

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

- 26 (a) Australia and a foreign country; or  
27 (b) Australia and 2 or more foreign countries.

28 **introduced animal** means an animal other than:

- 29 (a) a native animal (within the meaning of the *Environment*  
30 *Protection and Biodiversity Conservation Act 1999*); or  
31 (b) livestock.

1 ***introduced animal emissions avoidance project*** means:

- 2 (a) a project to avoid emissions of methane from the digestive  
3 tract of an introduced animal; or  
4 (b) a project to avoid emissions of:  
5 (i) methane; or  
6 (ii) nitrous oxide;  
7 from the decomposition of:  
8 (iii) introduced animal urine; or  
9 (iv) introduced animal dung.

10 Note: See also section 303.

11 ***issue***, in relation to an Australian carbon credit unit, means issue  
12 under section 147.

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

16 ***Kyoto abatement deadline*** means:

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

19 ***Kyoto Australian carbon credit unit*** means an Australian carbon  
20 credit unit that has attributes specified in a legislative instrument  
21 made by the Minister for the purposes of this definition.

22 ***Kyoto offsets project*** has the meaning given by section 55.

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

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

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

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

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

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

12                   **land rights holder**, in relation to land rights land, means:

- 13                    (a) if the land rights land is covered by paragraph (a) of the  
14                    definition of **land rights land**—the person who holds the  
15                    freehold estate, or the lease, mentioned in that paragraph; or  
16                    (b) if the land rights land is covered by paragraph (b) of the  
17                    definition of **land rights land**—the person in whom the land  
18                    is vested as mentioned in that paragraph; or  
19                    (c) if the land rights land is covered by paragraph (c) of the  
20                    definition of **land rights land**—the person who holds the land  
21                    as mentioned in that paragraph; or  
22                    (d) if the land rights land is covered by paragraph (d) of the  
23                    definition of **land rights land**—the person who holds the land  
24                    reserved as mentioned in that paragraph; or  
25                    (e) if the land rights land is covered by paragraph (e) of the  
26                    definition of **land rights land**—a person specified in the  
27                    regulations.

28                   **land rights land** means land, where:

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

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

- 3 (c) neither paragraph (a) nor (b) applies, and the land is held  
4 expressly for the benefit of, or is held in trust expressly for  
5 the benefit of, Aboriginal peoples or Torres Strait Islanders;  
6 or  
7 (d) the land is reserved expressly for the benefit of Aboriginal  
8 peoples or Torres Strait Islanders; or  
9 (e) the land is specified in the regulations.

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

12 ***lease***, in relation to land rights land, includes:

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

19 ***long-term certified emission reduction*** has the same meaning as in  
20 the *Australian National Registry of Emissions Units Act 2011*.

21 ***maximum potential relinquishment period***, in relation to an  
22 eligible offsets project, has the meaning given by section 87.

23 ***methodology determination*** has the meaning given by section 106.

24 ***monitoring powers*** has the meaning given by section 199.

25 ***monitoring warrant*** means a warrant issued under section 211.

26 ***National Inventory Report*** means the most recently published  
27 document that is:

- 28 (a) known as the National Inventory Report; and  
29 (b) prepared by the Department in fulfilment of obligations that  
30 Australia has under the Climate Change Convention.

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

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- 1                    **native forest** means an area of land that:
- 2                    (a) is dominated by trees that:
- 3                            (i) are located within their natural range; and
- 4                            (ii) have attained, or have the potential to attain, a crown
- 5                                    cover of at least 20% of the area of land; and
- 6                            (iii) have reached, or have the potential to reach, a height of
- 7                                    at least 2 metres; and
- 8                    (b) is not a plantation.
- 9                    It is immaterial whether any of the trees have been established with
- 10                    human assistance following any of the following events:
- 11                            (c) flood;
- 12                            (b) bushfire;
- 13                            (d) drought;
- 14                            (e) pest attack;
- 15                            (f) disease;
- 16                            (g) an event specified in the regulations.
- 17                    The regulations may provide that, for the purposes of this
- 18                    definition, **trees** and **crown cover** have the respective meanings
- 19                    given by the regulations.
- 20                    **native forest protection project** means a project:
- 21                            (a) to remove carbon dioxide from the atmosphere by
- 22                                    sequestering carbon in trees in one or more native forests;
- 23                                    and
- 24                            (b) to avoid emissions of greenhouse gases attributable to the
- 25                                    clearing or clear-felling of one or more native forests.
- 26                    **native title** has the same meaning as in the *Native Title Act 1993*.
- 27                    **native title holder** has the same meaning as in the *Native Title Act*
- 28                    *1993*.
- 29                    **native title land**: an area of land is **native title land** if there is an
- 30                    entry on the National Native Title Register specifying that native
- 31                    title exists in relation to the area.
- 32                    **natural disturbance**, in relation to an eligible offsets project,
- 33                    means any of the following events, where the event could not
- 34                    reasonably be prevented by the project proponent for the project:



- 1 (a) flood;  
2 (b) bushfire;  
3 (c) drought;  
4 (d) pest attack;  
5 (e) disease;  
6 (f) an event specified in the regulations.

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

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

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

14 **non-Kyoto offsets project** has the meaning given by section 55.

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

16 **offsets integrity standards** has the meaning given by section 133.

17 **offsets project** means:

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

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

22 **offsets report** means a report under section 76.

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

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

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

29 **permitted carbon activity** has the meaning given by paragraph  
30 97(2)(b).

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

- 2            (a) an individual;
- 3            (b) a body corporate;
- 4            (c) a trust;
- 5            (d) a corporation sole;
- 6            (e) a body politic;
- 7            (f) a local governing body.

8            **person assisting** an inspector has the meaning given by

9            section 200.

10          **premises** includes the following:

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

14          **prescribed eligible carbon unit** means a prescribed unit that is

15          issued under a scheme relating to either or both of the following:

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

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

20          **prescribed native forest protection project** means a native forest

21          protection project that meets the requirements specified in

22          regulations made for the purposes of this definition.

23          **prescribed non-CFI offsets scheme** has the meaning given by the

24          regulations.

25          **project** includes a set of activities.

26          **project area**, in relation an offsets project, means an area of land

27          on which the project has been, is being, or is to be, carried out.

28          **project proponent**:

- 29          (a) in relation to a sequestration offsets project—means the
- 30                  person who:
- 31                  (i) is responsible for carrying out the project; and
- 32                  (ii) has the legal right to carry out the project; and

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- 1 (iii) holds the applicable carbon sequestration right in  
 2 relation to the project area or each of the project areas;  
 3 or  
 4 (b) in relation to an emissions avoidance offsets project—means  
 5 the person who:  
 6 (i) is responsible for carrying out the project; and  
 7 (ii) has the legal right to carry out the project.

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

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

10 ***protected Administrator information*** means protected information  
 11 that was obtained by a person in the person's capacity as:

- 12 (a) the Administrator; or  
 13 (b) a delegate of the Administrator; or  
 14 (c) a person assisting the Administrator under section 250; or  
 15 (d) a person whose services are made available to the  
 16 Administrator under section 251; or  
 17 (e) a person engaged as a consultant under section 252; or  
 18 (f) an audit team leader; or  
 19 (g) a person assisting an audit team leader.

20 ***protected DOIC information*** means protected information that was  
 21 obtained by a person in the person's capacity as:

- 22 (a) a Domestic Offsets Integrity Committee member; or  
 23 (b) a person assisting the Domestic Offsets Integrity Committee  
 24 under section 269.

25 ***protected information*** means information that:

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

31 ***quarter*** means a period of 3 months beginning on 1 January,  
 32 1 April, 1 July or 1 October.

33 ***recognised*** as an offsets entity means recognised under section 64.

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1            **recognised offsets entity** means a person recognised as an offsets  
2            entity.

3            **regional natural resource management organisation** has the  
4            meaning given by the regulations.

5            **regional natural resource management plan** means a plan  
6            prepared by a regional natural resource management organisation.

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

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

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

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

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

19           **Register of Offsets Projects** means the register kept under  
20           section 167.

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

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

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

- 28           (a) relates to, or to an element of, the project; and  
29           (b) is required under a law of the Commonwealth, a State or  
30           Territory that relates to:  
31           (i) land use or development; or

- 1 (ii) the environment; or  
2 (iii) water.

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

- 4 (a) to the extent (if any) to which the project is a project to  
5 remove carbon dioxide from the atmosphere by sequestering  
6 carbon in particular living biomass—means the biomass; or  
7 (b) to the extent (if any) to which the project is a project to  
8 remove carbon dioxide from the atmosphere by sequestering  
9 carbon in particular dead organic matter—means the dead  
10 organic matter; or  
11 (c) to the extent (if any) to which the project is a project to  
12 remove carbon dioxide from the atmosphere by sequestering  
13 carbon in particular soil—means the soil.

14 **relevant land registration official**:

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

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

25 **removal unit** has the same meaning as in the *Australian National*  
26 *Registry of Emissions Units Act 2011*.

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

30 Note: See section 76.

31 **reviewable decision** has the meaning given by section 240.

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

Section 5

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- 1 **scheme**, when used in Part 22, means:
- 2 (a) any agreement, arrangement, understanding, promise or
- 3 undertaking, whether express or implied and whether or not
- 4 enforceable, or intended to be enforceable, by legal
- 5 proceedings; or
- 6 (b) any scheme, plan, proposal, action, course of action or course
- 7 of conduct, whether there are 2 or more parties or only one
- 8 party involved.

9 **Secretary** means the Secretary of the Department.

10 **sequestration offsets project** has the meaning given by section 54.

11 **special native title account** means a Registry account designated as

12 a special native title account under subsection 48(6).

13 **statutory authority** of the Commonwealth, a State or a Territory,

14 means an authority or body (including a corporation sole)

15 established by or under a law of the Commonwealth, the State or

16 the Territory (other than a general law allowing incorporation as a

17 company or body corporate), but does not include:

- 18 (a) an Aboriginal Land Trust established under the *Aboriginal*
- 19 *Land Rights (Northern Territory) Act 1976*; or
- 20 (b) the Wreck Bay Aboriginal Community Council established
- 21 by the *Aboriginal Land Grant (Jervis Bay Territory) Act*
- 22 *1986*; or
- 23 (c) a corporation registered under the *Corporations (Aboriginal*
- 24 *and Torres Strait Islander) Act 2006*; or
- 25 (d) an authority or body that is:
- 26 (i) established by or under a law of the Commonwealth, a
- 27 State or a Territory; and
- 28 (ii) specified in the regulations.

29 **temporary certified emission reduction** has the same meaning as

30 in the *Australian National Registry of Emissions Units Act 2011*.

31 **Torrens system land**: land is **Torrens system land** if the title to the

32 land is registered under a Torrens system of registration.

33 **Torres Strait Islander** has the same meaning as in the *Native Title*

34 *Act 1993*.

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**transfer:**

- (a) in relation to an Australian carbon credit unit—has the meaning given by section 151; or
- (b) in relation to a Kyoto unit—has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

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

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

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

**vacancy**, in relation to the office of a Domestic Offsets Integrity Committee member, has a meaning affected by section 6.

**voluntary automatic unit cancellation regime**: see paragraph 27(3)(e).

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

## 6 Vacancy in the office of a Domestic Offsets Integrity Committee member

For the purposes of a reference in:

- (a) this Act to a **vacancy** in the office of a Domestic Offsets Integrity Committee member; or
- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;

there are taken to be 4 offices of member of the Domestic Offsets Integrity Committee in addition to the Chair of the Domestic Offsets Integrity Committee.

## 7 Electronic notice transmitted to the Administrator

- (1) For the purposes of this Act, a notice is an **electronic notice transmitted to the Administrator** if, and only if:

Section 8

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

25 **8 Crown to be bound**

- 26 (1) This Act binds the Crown in each of its capacities.
- 27 (2) This Act does not make the Crown liable to a pecuniary penalty or  
28 to be prosecuted for an offence.
- 29 (3) The protection in subsection (2) does not apply to an authority of  
30 the Crown.



Section 9

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1                   (4) The protection in subsection (2) does not apply to a penalty under  
2                   section 179 or 180.

3                   **9 Extension to external Territories**

4                   This Act extends to every external Territory.  
5

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

3 **Division 1—Introduction**

4 **10 Simplified outline**

5 The following is a simplified outline of this Part:

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- Australian carbon credit units may be issued in relation to an eligible offsets project.
  - The number of Australian carbon credit units issued will be worked out by reference to:
    - (a) the relevant abatement amount calculated under the applicable methodology determination; or
    - (b) if the project is a native forest protection project—the relevant sequestration amount calculated under the applicable methodology determination.
  - For sequestration offsets projects, a risk of reversal buffer applies.

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

3 **11 Issue of Australian carbon credit units in respect of offsets**  
4 **projects**

5 *Scope*

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

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

9 *Issue of units*

- 10 (2) If:

- 11 (a) the project is an eligible Kyoto project; and  
12 (b) the reporting period ends on or before the Kyoto abatement  
13 deadline;

14 the Administrator must, as soon as practicable after the day on  
15 which the certificate was issued, issue to the holder of the  
16 certificate a number of Kyoto Australian carbon credit units equal  
17 to the number specified in the certificate as the unit entitlement for  
18 that certificate.

- 19 (3) If:

- 20 (a) the project is an eligible non-Kyoto project; and  
21 (b) the reporting period ends on or before the Kyoto abatement  
22 deadline;

23 the Administrator must, as soon as practicable after the day on  
24 which the certificate was issued, issue to the holder of the  
25 certificate a number of non-Kyoto Australian carbon credit units  
26 equal to the number specified in the certificate as the unit  
27 entitlement for that certificate.

- 28 (4) If the reporting period ends after the Kyoto abatement deadline, the  
29 Administrator must, as soon as practicable after the day on which  
30 the certificate was issued, issue to the holder of the certificate a  
31 number of non-Kyoto Australian carbon credit units equal to the

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

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

**Section 11**

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1                    number specified in the certificate as the unit entitlement for that  
2                    certificate.

3                    (5) The Administrator must not issue an Australian carbon credit unit  
4                    to a person in accordance with subsection (2), (3) or (4) unless the  
5                    person has a Registry account.

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

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

10                   (6) The Administrator must issue an Australian carbon credit unit to a  
11                   person in accordance with subsection (2), (3) or (4) by making an  
12                   entry for the unit in the person's Registry account the account  
13                   number of which is specified in the certificate.

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

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

18

1 **Division 3—Certificate of entitlement**

2 **12 Application for certificate of entitlement**

3 After the end of a reporting period for an eligible offsets project, a  
4 person may apply to the Administrator for the issue to the person  
5 of a certificate of entitlement in respect of the project for the  
6 reporting period.

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

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

9 **13 Form of application**

10 (1) An application must:

- 11 (a) be in writing; and  
12 (b) be in a form approved, in writing, by the Administrator; and  
13 (c) set out the account number of a Registry account of the  
14 applicant that should be specified in the certificate; and  
15 (d) be accompanied by such information as is specified in the  
16 regulations; and  
17 (e) be accompanied by a prescribed audit report prepared by a  
18 registered greenhouse and energy auditor who has been  
19 appointed as an audit team leader for the purpose; and  
20 (f) be accompanied by the offsets report about the project for the  
21 relevant reporting period; and  
22 (g) be accompanied by such other documents (if any) as are  
23 specified in the regulations; and  
24 (h) be accompanied by the fee (if any) specified in the  
25 regulations.

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

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

30 (2) The regulations may provide that a project of a kind specified in  
31 the regulations is exempt from paragraph (1)(e).

**Section 14**

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- 1 (3) Subsection (2) of this section does not, by implication, limit the  
2 application of subsection 13(3) of the *Legislative Instruments Act*  
3 *2003* to another instrument under this Act.
- 4 (4) The approved form of application may provide for verification by  
5 statutory declaration of statements in applications.
- 6 (5) A fee specified under paragraph (1)(h) must not be such as to  
7 amount to taxation.

**14 Further information**

- 9 (1) The Administrator may, by written notice given to an applicant,  
10 require the applicant to give the Administrator, within the period  
11 specified in the notice, further information in connection with the  
12 application.
- 13 (2) If the applicant breaches the requirement, the Administrator may,  
14 by written notice given to the applicant:  
15 (a) refuse to consider the application; or  
16 (b) refuse to take any action, or any further action, in relation to  
17 the application.

**15 Issue of certificate of entitlement**

18 *Scope*

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

22 *Issue of certificate*

- 23 (2) If the Administrator is satisfied that:  
24 (a) the applicant is a recognised offsets entity; and  
25 (b) the applicant was, immediately before the end of the period:  
26 (i) the project proponent for the project; and  
27 (ii) identified in the relevant section 27 declaration as the  
28 project proponent for the project; and  
29

- 1 (c) the reporting period is included in a crediting period for the  
2 project; and  
3 (d) if the project is a prescribed native forest protection project—  
4 the reporting period is the first reporting period for the  
5 project; and  
6 (e) if the relevant section 27 declaration is subject to the  
7 condition that all regulatory approvals must be obtained for  
8 the project before the end of the first crediting period for the  
9 project—that condition has been met; and  
10 (f) the applicant is not subject to a requirement under Part 7 to  
11 relinquish a number of Australian carbon credit units; and  
12 (g) no amount is payable by the applicant under:  
13 (i) section 179; or  
14 (ii) section 180;  
15 in relation to a requirement under Part 7 to relinquish a  
16 number of Australian carbon credit units; and  
17 (h) if the regulations specify one or more other eligibility  
18 requirements—those requirements are met;  
19 the Administrator must issue a certificate of entitlement in respect  
20 of the project for the period.

21 Note: For *recognised offsets entity*, see section 64.

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

24 Note: For unit entitlement, see section 16, 17 or 18.

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

28 *Timing*

- 29 (5) The Administrator must take all reasonable steps to ensure that a  
30 decision is made on the application:  
31 (a) if the Administrator requires the applicant to give further  
32 information under subsection 14(1) in relation to the  
33 application—within 90 days after the applicant gave the  
34 Administrator the information; or

Section 16

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

2 *Refusal*

3 (6) If the Administrator decides to refuse to issue a certificate of  
4 entitlement, the Administrator must give written notice of the  
5 decision to the applicant.

6 **16 Unit entitlement—sequestration offsets projects other than native**  
7 **forest protection projects**

8 *Scope*

9 (1) This section applies to an eligible offsets project if the project is a  
10 sequestration offsets project other than a native forest protection  
11 project.

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

13 *Unit entitlement*

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

18 
$$\text{Net abatement number} - \frac{\text{Risk of reversal}}{\text{buffer number}}$$

19 where:

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

24 *risk of reversal buffer number* means:

25 (a) 5%; or

26 (b) if:

27 (i) at the start of the crediting period in which the reporting  
28 period is included, another percentage is specified in the  
29 regulations in relation to a particular kind of project;  
30 and



- 1 (ii) the project is of that kind;  
2 that other percentage;  
3 of the net abatement number.
- 4 (3) If the number worked out using the formula in subsection (2) is not  
5 a whole number, the number is to be rounded to the nearest whole  
6 number (with a number ending in .5 being rounded down).
- 7 (4) For the purposes of subsection (3), zero is taken to be a whole  
8 number.

9 **17 Unit entitlement—native forest protection projects**

10 *Scope*

- 11 (1) This section applies to an eligible offsets project if the project is a  
12 native forest protection project.

13 Note: For *native forest protection project*, see section 5.

14 *Unit entitlement—prescribed native forest protection projects*

- 15 (2) If the project is a prescribed native forest protection project, the  
16 number to be specified in a certificate of entitlement in respect of  
17 the project for a reporting period as the unit entitlement in respect  
18 of the certificate is the number worked out using the formula:

19 
$$\text{Net sequestration number} - \frac{\text{Risk of reversal}}{\text{buffer number}}$$

20 where:

21 *net sequestration number* means the total number of tonnes in the  
22 amount that, under the applicable methodology determination, is  
23 the carbon dioxide equivalent net sequestration amount for the  
24 project for the crediting period in which the reporting period is  
25 included.

26 *risk of reversal buffer number* means:

27 (a) 5%; or

28 (b) if:

- 29 (i) at the start of the crediting period in which the reporting  
30 period is included, another percentage is specified in the

Section 17

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- 1 regulations in relation to a particular kind of project;  
2 and  
3 (ii) the project is of that kind;  
4 that other percentage;  
5 of the net sequestration number.

6 Note: For *prescribed native forest protection project*, see section 5.

7 *Unit entitlement—other native forest protection projects*

- 8 (3) If the project is not a prescribed native forest protection project, the  
9 number to be specified in a certificate of entitlement in respect of  
10 the project for a reporting period as the unit entitlement in respect  
11 of the certificate is the number worked out using the formula:

12 
$$\left( \frac{\text{Net sequestration number} - \text{Risk of reversal buffer number}}{\text{Net sequestration number} - \text{Risk of reversal buffer number}} \right) \times \frac{\text{Reporting period number}}{\text{Crediting period number}}$$

13 where:

14 *crediting period number* means the number of years in the  
15 crediting period in which the reporting period is included.

16 *net sequestration number* means the total number of tonnes in the  
17 amount that, under the applicable methodology determination, is  
18 the carbon dioxide equivalent net sequestration amount for the  
19 project for the crediting period in which the reporting period is  
20 included.

21 *reporting period number* means the number of years in the  
22 reporting period.

23 *risk of reversal buffer number* means:

24 (a) 5%; or

25 (b) if:

- 26 (i) at the start of the crediting period in which the reporting  
27 period is included, another percentage is specified in the  
28 regulations in relation to a particular kind of project;  
29 and  
30 (ii) the project is of that kind;
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1                           that other percentage;  
2                           of the net sequestration number.

3                           *Rounding down*

4                           (4) If the number worked out using the formula in subsection (2) or (3)  
5                           is not a whole number, the number is to be rounded to the nearest  
6                           whole number (with a number ending in .5 being rounded down).

7                           (5) For the purposes of subsection (4), zero is taken to be a whole  
8                           number.

9                           **18 Unit entitlement—emissions avoidance offsets project**

10                           *Scope*

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

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

14                           *Unit entitlement*

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

21                           **19 Cancellation of units issued in respect of a project that is subject**  
22                           **to the voluntary automatic unit cancellation regime**

23                           *Scope*

24                           (1) This section applies if:  
25                           (a) an eligible offsets project is subject to the voluntary  
26                           automatic unit cancellation regime; and  
27                           (b) an Australian carbon credit unit is issued to a person in  
28                           respect of the project.

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

**Division 3** Certificate of entitlement

**Section 20**

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1 Note: For when an eligible offsets project is subject to the voluntary  
2 automatic unit cancellation regime, see paragraph 27(3)(e).

3 *Automatic cancellation*

4 (2) Immediately after the issue of the unit:

5 (a) the unit is cancelled; and

6 (b) the Administrator must remove the entry for the unit from the  
7 person's Registry account in which there is an entry for the  
8 unit; and

9 (c) if the unit is a Kyoto Australian carbon credit unit:

10 (i) the Minister must, by written notice given to the  
11 Administrator, direct the Administrator to transfer a  
12 Kyoto unit from a Commonwealth holding account to a  
13 voluntary cancellation account before the end of the  
14 true-up period for the relevant commitment period; and

15 (ii) the Administrator must comply with a direction under  
16 subparagraph (i).

17 (3) The Registry must set out a record of each cancellation under  
18 subsection (2).

19 *No transfer*

20 (4) The Australian carbon credit unit cannot be transferred.

21 **20 Certificate of entitlement not transferable**

22 A certificate of entitlement is not transferable.  
23

1 **Part 3—Eligible offsets projects**

2 **Division 1—Introduction**

3 **21 Simplified outline**

4 The following is a simplified outline of this Part:

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| <ul style="list-style-type: none"><li>• The Administrator may declare an offsets project to be an eligible offsets project.</li><li>• The Administrator may vary or revoke a declaration of an eligible offsets project.</li></ul> |
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1 **Division 2—Declaration of eligible offsets project**

2 **22 Application for declaration of eligible offsets project**

- 3 (1) A person may apply to the Administrator for the declaration of an  
4 offsets project as an eligible offsets project.

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

- 7 (2) A person is not entitled to make an application before the 28th day  
8 after the commencement of this section.

9 **23 Form of application**

- 10 (1) An application must:  
11 (a) be in writing; and  
12 (b) be in a form approved, in writing, by the Administrator; and  
13 (c) be accompanied by such information as is specified in the  
14 regulations; and  
15 (d) if the project is of a kind specified in the regulations—be  
16 accompanied by a prescribed audit report prepared by a  
17 registered greenhouse and energy auditor who has been  
18 appointed as an audit team leader for the purpose; and  
19 (e) if:  
20 (i) the project area for the project was, or the project areas  
21 for the project were, wholly or partly covered by a  
22 prescribed non-CFI offsets scheme; and  
23 (ii) the applicant is entitled to make a request under  
24 section 92 in relation to the project;  
25 be accompanied by such a request; and  
26 (f) if an indigenous land use agreement is relevant to the  
27 Administrator’s decision on the application—be  
28 accompanied by a copy of the agreement; and  
29 (g) if the project area, or any of the project areas, for the project  
30 is covered by a regional natural resource management plan—  
31 be accompanied by a statement about whether the project is  
32 consistent with the plan; and

- 1 (h) be accompanied by such other documents (if any) as are  
2 specified in the regulations; and  
3 (i) be accompanied by the fee (if any) specified in the  
4 regulations.

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

- 7 (2) The approved form of application may provide for verification by  
8 statutory declaration of statements in applications.
- 9 (3) A fee specified under paragraph (1)(i) must not be such as to  
10 amount to taxation.
- 11 (4) An application may include a statement to the effect that the  
12 project should be subject to the voluntary automatic unit  
13 cancellation regime.
- 14 (5) Paragraph (1)(d) of this section does not, by implication, affect the  
15 application of subsection 13(3) of the *Legislative Instruments Act*  
16 *2003* to:  
17 (a) another paragraph of subsection (1) of this section; or  
18 (b) another instrument under this Act.

## 19 **24 Further information**

- 20 (1) The Administrator may, by written notice given to an applicant,  
21 require the applicant to give the Administrator, within the period  
22 specified in the notice, further information in connection with the  
23 application.
- 24 (2) If the applicant breaches the requirement, the Administrator may,  
25 by written notice given to the applicant:  
26 (a) refuse to consider the application; or  
27 (b) refuse to take any action, or any further action, in relation to  
28 the application.

## 29 **25 Withdrawal of application**

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

**Part 3** Eligible offsets projects

**Division 2** Declaration of eligible offsets project

**Section 26**

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1 (2) This Act does not prevent the applicant from making a fresh  
2 application.

3 (3) If:

4 (a) the applicant withdraws the application; and

5 (b) the applicant has paid a fee in relation to the application;  
6 the Administrator must, on behalf of the Commonwealth, refund  
7 the application fee.

8 **26 Application may be split**

9 *Scope*

10 (1) This section applies if:

11 (a) an application under section 22 has been made, or  
12 purportedly made, for a declaration of an offsets project as an  
13 eligible offsets project; and

14 (b) the Administrator is satisfied that the application relates to 2  
15 or more offsets projects.

16 Note: See also subsection 55(6).

17 *Application may be split*

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

22 **27 Declaration of eligible offsets project**

23 *Scope*

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

27 *Declaration*

28 (2) After considering the application, the Administrator may, by  
29 writing:



- 1 (a) declare that the offsets project is:  
2 (i) an *eligible offsets project* for the purposes of this Act;  
3 and  
4 (ii) an *eligible Kyoto project* for the purposes of this Act; and  
5 (b) declare that the offsets project is:  
6 (i) an *eligible offsets project* for the purposes of this Act;  
7 and  
8 (ii) an *eligible non-Kyoto project* for the purposes of this  
9 Act.
- 10 (3) A declaration under subsection (2) must:  
11 (a) identify the name of the project; and  
12 (b) identify, in accordance with the regulations, the project area  
13 or project areas; and  
14 (c) identify the project proponent for the project; and  
15 (d) identify such attributes of the project as are specified in the  
16 regulations; and  
17 (e) if the application included a statement to the effect that the  
18 project should be subject to the voluntary automatic unit  
19 cancellation regime—declare that the project is subject to the  
20 voluntary automatic unit cancellation regime.

21 *Criteria for declaration*

- 22 (4) The Administrator must not declare that the offsets project is an  
23 eligible offsets project unless the Administrator is satisfied that:  
24 (a) the project is, or is to be, carried on in Australia; and  
25 (b) the project is covered by a methodology determination; and  
26 (c) the project meets such requirements as are set out in the  
27 methodology determination in accordance with paragraph  
28 106(1)(b); and  
29 (d) the project passes the additionality test; and  
30 (e) the applicant is the project proponent for the project; and  
31 (f) the applicant is a recognised offsets entity; and  
32 (g) if the project is a sequestration offsets project—the project  
33 area, or each project area, meets the requirements set out in  
34 subsection (5) of this section; and  
35 (h) if:
-

**Part 3** Eligible offsets projects

**Division 2** Declaration of eligible offsets project

**Section 27**

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- 1 (i) the project is a sequestration offsets project; and  
2 (ii) the project area is, or any of the project areas are, Crown  
3 land in a State or Territory; and  
4 (iii) the project area is not, or the project areas are not,  
5 Torrens system land; and  
6 (iv) the project area is not, or the project areas are not, the  
7 property of the Commonwealth; and  
8 (v) the project area is not, or the project areas are not,  
9 freehold land rights land; and  
10 (vi) the applicant is not the State or Territory;  
11 the Crown lands Minister of the State or Territory has  
12 certified in writing that:  
13 (vii) the applicant holds the applicable carbon sequestration  
14 right in relation to the project area or project areas; and  
15 (viii) the State or Territory will not deal with the project area  
16 or project areas in a way that is inconsistent with the  
17 applicable carbon sequestration right; and  
18 (ix) if another person is required to obtain the consent of the  
19 State or Territory to a dealing with the project area or  
20 project areas—the State or Territory will not give that  
21 consent in a way that is inconsistent with the applicable  
22 carbon sequestration right; and  
23 (i) if:  
24 (i) the project is a sequestration offsets project; and  
25 (ii) the project area is, or any of the project areas are, Crown  
26 land; and  
27 (iii) the project area is, or the project areas are, the property  
28 of the Commonwealth;  
29 (iv) the project area is not, or the project areas are not,  
30 freehold land rights land; and  
31 the Minister has certified in writing that:  
32 (v) the applicant holds the applicable carbon sequestration  
33 right in relation to the project area or project areas; and  
34 (vi) the Commonwealth will not deal with the project area or  
35 project areas in a way that is inconsistent with the  
36 applicable carbon sequestration right; and

- 1 (vii) if another person is required to obtain the consent of the  
2 Commonwealth to a dealing with the project area or  
3 project areas—the Commonwealth will not give that  
4 consent in a way that is inconsistent with the applicable  
5 carbon sequestration right; and  
6 (j) the project does not involve:  
7 (i) the clearing of native forest; or  
8 (ii) using material obtained as a result of the clearing or  
9 harvesting of native forest; and  
10 (k) if the project is a sequestration offsets project—each person  
11 (other than the applicant) who holds an eligible interest in the  
12 project area or any of the project areas has consented, in  
13 writing, to the making of the application; and  
14 (l) the project meets the eligibility requirements (if any)  
15 specified in the regulations; and  
16 (m) the project is not an excluded offsets project; and  
17 (n) the project area is not, or the project areas are not, wholly or  
18 partly covered by a prescribed non-CFI offsets scheme.

19 Note 1: Methodology determinations are made under section 106.

20 Note 2: For the additionality test, see section 41.

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

- 22 (5) The requirements mentioned in paragraph (4)(g) are:  
23 (a) the project area is Torrens system land or Crown land; and  
24 (b) the project area is not specified in the regulations.

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

- 27 (6) Subparagraph (4)(j)(ii) does not apply to a use specified in the  
28 regulations.  
29 (7) A consent under paragraph (4)(k) must be in a form approved, in  
30 writing, by the Administrator.  
31 (8) A consent under paragraph (4)(k) may be set out in a registered  
32 indigenous land use agreement.

**Part 3** Eligible offsets projects

**Division 2** Declaration of eligible offsets project

**Section 27**

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- 1 (9) Subsection (7) does not apply to a consent under paragraph (4)(k)  
2 if the consent is set out in a registered indigenous land use  
3 agreement.
- 4 (10) The Administrator must not make a declaration under  
5 subsection (2) if the project area is, or any of the project areas are,  
6 subject to a carbon maintenance obligation.
- 7 (11) The Administrator must not make a declaration under  
8 subsection (2) in relation to a project (the *new project*) if:  
9 (a) a notice was given under section 88, 89, 90 or 91 in relation  
10 to a project (the *prior project*) that is or was:  
11 (i) an eligible offsets project; and  
12 (ii) a sequestration offsets project; and  
13 (b) the project area, or any of the project areas, for the new  
14 project was or were identified in the relevant section 27  
15 declaration as the project area or project areas for the prior  
16 project; and  
17 (c) the notice required a person to relinquish a particular number  
18 of Australian carbon credit units; and  
19 (d) the person did not comply with the requirement within 90  
20 days after the notice was given; and  
21 (e) the penalty payable under section 179 in respect of the  
22 non-compliance with the requirement (including any late  
23 payment penalty payable under section 180 in relation to the  
24 section 179 penalty) has not been paid in full.
- 25 (12) The Administrator must not declare that the offsets project is an  
26 eligible Kyoto project unless the Administrator is satisfied that the  
27 project is a Kyoto offsets project.
- 28 (13) The Administrator must not declare that the offsets project is an  
29 eligible non-Kyoto project unless the Administrator is satisfied that  
30 the project is a non-Kyoto offsets project.

31 *Timing*

- 32 (14) The Administrator must take all reasonable steps to ensure that a  
33 decision is made on the application:

- 1 (a) if the Administrator requires the applicant to give further  
2 information under subsection 24(1) in relation to the  
3 application—within 90 days after the applicant gave the  
4 Administrator the information; or  
5 (b) if the Administrator requires the applicant to give further  
6 information under subsection 94(1) in relation to the offsets  
7 project—within 90 days after the applicant gave the  
8 Administrator the information; or  
9 (c) otherwise—within 90 days after the application was made.

10 *When a declaration takes effect*

- 11 (15) A declaration under subsection (2) takes effect:  
12 (a) when it is made; or  
13 (b) if:  
14 (i) an earlier day is specified in the declaration; and  
15 (ii) the applicant has consented to the specification of the  
16 earlier day;  
17 on the day specified.  
18 (16) The specified day must not be a day that is earlier than 1 July 2010.

19 *Notification of declaration*

- 20 (17) As soon as practicable after making a declaration under  
21 subsection (2), the Administrator must give a copy of the  
22 declaration to:  
23 (a) the applicant; and  
24 (b) the relevant land registration official.

25 *Refusal*

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

29 *Registered indigenous land use agreements*

- 30 (19) If:  
31 (a) a declaration under subsection (2) is in force; and
-

**Part 3** Eligible offsets projects

**Division 2** Declaration of eligible offsets project

**Section 28**

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1 (b) a relevant consent under paragraph (4)(k) was set out in a  
2 registered indigenous land use agreement;  
3 details of the agreement must not be removed from the Register of  
4 Indigenous Land Use Agreements under subparagraph  
5 199C(1)(c)(ii) of the *Native Title Act 1993* without the written  
6 consent of the Administrator.

7 *Declaration is not legislative instrument*

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

10 **28 Declaration may be subject to condition about obtaining**  
11 **regulatory approvals**

12 *Scope*

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

21 *Condition*

- 22 (2) The Administrator must specify in the declaration that the  
23 declaration is subject to the condition that all regulatory approvals  
24 must be obtained for the project before the end of the first crediting  
25 period for the project.  
26

1 **Division 3—Variation of declaration of eligible offsets**  
2 **project**

3 **29 Voluntary variation of declaration of eligible offsets project in**  
4 **relation to the project area or project areas**

5 *Regulations*

- 6 (1) The regulations may make provision for and in relation to  
7 empowering the Administrator to vary a declaration under  
8 section 27 in relation to an offsets project so far as the declaration  
9 identifies the project area or project areas.
- 10 (2) Regulations made for the purposes of subsection (1) must not  
11 empower the Administrator to vary a declaration unless the project  
12 proponent for the project applies to the Administrator for the  
13 variation of the declaration.
- 14 (3) Regulations made for the purposes of subsection (1) may make  
15 provision for or in relation to any or all of the following matters:  
16 (a) applications for variations under those regulations;  
17 (b) the approval by the Administrator of a form for such an  
18 application;  
19 (c) information that must accompany such an application;  
20 (d) documents that must accompany such an application;  
21 (e) verification by statutory declaration of statements in such an  
22 application;  
23 (f) consents that must be obtained for the making of such an  
24 application;  
25 (g) authorising a person to issue a certificate in relation to such  
26 an application;  
27 (h) requiring such an application to be accompanied by a  
28 statement about consistency with a regional natural resource  
29 management plan (if any) that covers the project area or any  
30 of the project areas;  
31 (i) the fee (if any) that must accompany such an application;  
32 (j) the withdrawal of such an application;  
33 (k) empowering the Administrator:

**Part 3** Eligible offsets projects

**Division 3** Variation of declaration of eligible offsets project

**Section 29**

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- 1 (i) to require an applicant to give the Administrator further  
2 information in connection with such an application; and  
3 (ii) if the applicant breaches the requirement—to refuse to  
4 consider the application, or to refuse to take any action,  
5 or any further action, in relation to the application.

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

7 (5) A fee mentioned in paragraph (3)(i) must not be such as to amount  
8 to taxation.

9 (6) Regulations made for the purposes of subsection (1) must provide  
10 that, if a declaration of an eligible offsets project is varied in  
11 accordance with those regulations, the Administrator must give a  
12 copy of the variation to:

- 13 (a) the applicant for the variation; and  
14 (b) the relevant land registration official.

15 (7) Regulations made for the purposes of subsection (1) must provide  
16 that, if the Administrator decides to refuse to vary a declaration of  
17 an eligible offsets project in accordance with an application for  
18 variation under those regulations, the Administrator must give  
19 written notice of the decision to the applicant for the variation.

20 *Registered indigenous land use agreements*

21 (8) If:

- 22 (a) a declaration of an eligible offsets project is varied in  
23 accordance with regulations made for the purposes of  
24 subsection (1); and  
25 (b) a consent to the making of the application for the variation  
26 was set out in a registered indigenous land use agreement;  
27 details of the agreement must not be removed from the Register of  
28 Indigenous Land Use Agreements under subparagraph  
29 199C(1)(c)(ii) of the *Native Title Act 1993* without the written  
30 consent of the Administrator.

31 *References to eligible offsets project*

32 (9) If a declaration of an eligible offsets project is varied in accordance  
33 with regulations made for the purposes of subsection (1), a



1 reference in this Act or the regulations to the eligible offsets  
2 project is a reference to the eligible offsets project as varied.

3 **30 Voluntary variation of declaration of eligible offsets project in**  
4 **relation to the project proponent**

5 *Regulations*

- 6 (1) The regulations may make provision for and in relation to  
7 empowering the Administrator to vary a declaration under  
8 section 27 in relation to an offsets project so far as the declaration  
9 identifies the project proponent for the project.
- 10 (2) Regulations made for the purposes of subsection (1) must not  
11 empower the Administrator to vary a declaration unless the project  
12 proponent for the project applies to the Administrator for the  
13 variation of the declaration.
- 14 (3) Regulations made for the purposes of subsection (1) may make  
15 provision for or in relation to any or all of the following matters:  
16 (a) applications for variations under those regulations;  
17 (b) the approval by the Administrator of a form for such an  
18 application;  
19 (c) information that must accompany such an application;  
20 (d) documents that must accompany such an application;  
21 (e) verification by statutory declaration of statements in such an  
22 application;  
23 (f) the fee (if any) that must accompany such an application;  
24 (g) the withdrawal of such an application;  
25 (h) empowering the Administrator:  
26 (i) to require an applicant to give the Administrator further  
27 information in connection with such an application; and  
28 (ii) if the applicant breaches the requirement—to refuse to  
29 consider the application, or to refuse to take any action,  
30 or any further action, in relation to the application;  
31 (i) empowering the Administrator to require the applicant to  
32 give security to the Commonwealth in relation to the  
33 fulfilment by the applicant of any requirements to relinquish

**Part 3** Eligible offsets projects

**Division 3** Variation of declaration of eligible offsets project

**Section 30**

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- 1                                    Australian carbon credit units that may be imposed on the  
2                                    applicant under this Part in relation to the project.
- 3                    (4) Subsection (3) does not limit subsection (1).
- 4                    (5) A fee mentioned in paragraph (3)(f) must not be such as to amount  
5                    to taxation.
- 6                    (6) Regulations made for the purposes of subsection (1) must provide  
7                    that, if a declaration of an eligible offsets project is varied in  
8                    accordance with those regulations, the Administrator must give a  
9                    copy of the variation to:
- 10                    (a) the applicant for the variation; and  
11                    (b) the relevant land registration official.
- 12                    (7) Regulations made for the purposes of subsection (1) must provide  
13                    that, if a declaration of an eligible offsets project is varied in  
14                    accordance with those regulations, the variation takes effect:
- 15                    (a) when it is made; or  
16                    (b) if:
- 17                                    (i) the Administrator makes a written determination  
18                                    specifying an earlier day; and  
19                                    (ii) the applicant for the variation has consented to the  
20                                    determination of the earlier day;  
21                    on the day so determined.
- 22                    (8) A determination made under subparagraph (7)(b)(i) is not a  
23                    legislative instrument.
- 24                    (9) Regulations made for the purposes of subsection (1) must provide  
25                    that, if the Administrator decides to refuse to vary a declaration of  
26                    an eligible offsets project in accordance with an application for  
27                    variation under those regulations, the Administrator must give  
28                    written notice of the decision to the applicant for the variation.
- 29                    *References to eligible offsets project*
- 30                    (10) If a declaration of an eligible offsets project is varied in accordance  
31                    with regulations made for the purposes of subsection (1), a  
32                    reference in this Act or the regulations to the eligible offsets  
33                    project is a reference to the eligible offsets project as varied.

1 **31 Voluntary variation of conditional declaration of eligible offsets**  
2 **project—regulatory approvals obtained**

3 *Scope*

- 4 (1) This section applies to a declaration under section 27 in relation to  
5 an offsets project if the declaration is subject to a condition that all  
6 regulatory approvals must be obtained for the project before the  
7 end of the first crediting period for the project.

8 *Regulations*

- 9 (2) The regulations may make provision for and in relation to  
10 empowering the Administrator to vary such a declaration by  
11 removing such a condition.
- 12 (3) Regulations made for the purposes of subsection (2) must not  
13 empower the Administrator to vary a declaration unless:  
14 (a) the project proponent for the project applies to the  
15 Administrator for the variation of the declaration; and  
16 (b) the Administrator is satisfied that the condition has been met.
- 17 (4) Regulations made for the purposes of subsection (2) may make  
18 provision for or in relation to any or all of the following matters:  
19 (a) applications for variations under those regulations;  
20 (b) the approval by the Administrator of a form for such an  
21 application;  
22 (c) information that must accompany such an application;  
23 (d) documents that must accompany such an application;  
24 (e) verification by statutory declaration of statements in such an  
25 application;  
26 (f) the fee (if any) that must accompany such an application;  
27 (g) the withdrawal of such an application;  
28 (h) empowering the Administrator:  
29 (i) to require an applicant to give the Administrator further  
30 information in connection with such an application; and  
31 (ii) if the applicant breaches the requirement—to refuse to  
32 consider the application, or to refuse to take any action,  
33 or any further action, in relation to the application.

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**Division 3** Variation of declaration of eligible offsets project

**Section 31**

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- 1 (5) Subsection (4) does not limit subsection (2).
- 2 (6) A fee mentioned in paragraph (4)(f) must not be such as to amount  
3 to taxation.
- 4 (7) Regulations made for the purposes of subsection (2) must provide  
5 that, if a declaration of an eligible offsets project is varied in  
6 accordance with those regulations, the Administrator must give a  
7 copy of the variation to:  
8 (a) the applicant for the variation; and  
9 (b) the relevant land registration official.
- 10 (8) Regulations made for the purposes of subsection (2) must provide  
11 that, if the Administrator decides to refuse to vary a declaration of  
12 an eligible offsets project in accordance with an application for  
13 variation under those regulations, the Administrator must give  
14 written notice of the decision to the applicant for the variation.
- 15 *References to eligible offsets project*
- 16 (9) If a declaration of an eligible offsets project is varied in accordance  
17 with regulations made for the purposes of subsection (2), a  
18 reference in this Act or the regulations to the eligible offsets  
19 project is a reference to the eligible offsets project as varied.  
20

1 **Division 4—Revocation of declaration of eligible offsets**  
2 **project**

3 **Subdivision A—Voluntary revocation of declaration of eligible**  
4 **offsets project**

5 **32 Voluntary revocation of declaration of eligible offsets project—**  
6 **units issued**

- 7 (1) The regulations may make provision for and in relation to  
8 empowering the Administrator to revoke a declaration under  
9 section 27 in relation to an offsets project.
- 10 (2) Regulations made for the purposes of subsection (1) must not  
11 empower the Administrator to revoke a declaration unless:
- 12 (a) one or more Australian carbon credit units have been issued  
13 in relation to the project in accordance with Part 2; and
  - 14 (b) the project proponent for the project applies to the  
15 Administrator for the revocation of the declaration; and
  - 16 (c) if the project is a sequestration offsets project—before the  
17 application was made, the applicant voluntarily relinquished:
    - 18 (i) a number of Kyoto Australian carbon credit units in  
19 order to satisfy a condition for revocation of the  
20 declaration; or
    - 21 (ii) a number of non-Kyoto Australian carbon credit units in  
22 order to satisfy a condition for revocation of the  
23 declaration; and
  - 24 (d) if the project is a sequestration offsets project—the number  
25 of relinquished units equals the net total number of  
26 Australian carbon credit units issued in relation to the project  
27 in accordance with Part 2.

28 Note 1: See also section 177 (transfer of certain units instead of  
29 relinquishment of Kyoto Australian carbon credit units).

30 Note 2: See also section 178 (transfer of certain units instead of  
31 relinquishment of non-Kyoto Australian carbon credit units).

- 32 (3) Regulations made for the purposes of subsection (1) may make  
33 provision for or in relation to either or both of the following  
34 matters:

**Part 3** Eligible offsets projects

**Division 4** Revocation of declaration of eligible offsets project

**Section 33**

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- 1 (a) applications for revocations under those regulations;  
2 (b) the approval by the Administrator of a form for such an  
3 application.
- 4 (4) Subsection (3) does not limit subsection (1).
- 5 (5) Regulations made for the purposes of subsection (1) must provide  
6 that, if a declaration of an eligible offsets project is revoked in  
7 accordance with those regulations, the Administrator must give a  
8 copy of the revocation to:  
9 (a) the applicant for the revocation; and  
10 (b) the relevant land registration official.

11 **33 Voluntary revocation of declaration of eligible offsets project—no**  
12 **units issued**

- 13 (1) The regulations may make provision for and in relation to  
14 empowering the Administrator to revoke a declaration under  
15 section 27 in relation to an offsets project.
- 16 (2) Regulations made for the purposes of subsection (1) must not  
17 empower the Administrator to revoke a declaration unless:  
18 (a) no Australian carbon credit units have been issued in relation  
19 to the project in accordance with Part 2; and  
20 (b) the project proponent for the project applies to the  
21 Administrator for the revocation of the declaration.
- 22 (3) Regulations made for the purposes of subsection (1) may make  
23 provision for or in relation to either or both of the following  
24 matters:  
25 (a) applications for revocations under those regulations;  
26 (b) the approval by the Administrator of a form for such an  
27 application.
- 28 (4) Subsection (3) does not limit subsection (1).
- 29 (5) Regulations made for the purposes of subsection (1) must provide  
30 that, if a declaration of an eligible offsets project is revoked in  
31 accordance with those regulations, the Administrator must give a  
32 copy of the revocation to:

- 1 (a) the applicant for the revocation; and  
2 (b) the relevant land registration official.

3 **Subdivision B—Unilateral revocation of declaration of eligible**  
4 **offsets project**

5 **34 Unilateral revocation of declaration of eligible offsets project—**  
6 **regulatory approvals not obtained**

- 7 (1) The regulations may make provision for and in relation to  
8 empowering the Administrator to revoke a declaration under  
9 section 27 in relation to an offsets project.
- 10 (2) Regulations made for the purposes of subsection (1) must not  
11 empower the Administrator to revoke a declaration unless:  
12 (a) the declaration is subject to the condition that all regulatory  
13 approvals for the project must be obtained before the end of  
14 the first crediting period for the project; and  
15 (b) the Administrator is satisfied that the condition has not been  
16 met.
- 17 (3) Regulations made for the purposes of subsection (1) must require  
18 the Administrator to consult the project proponent for the project  
19 before deciding to revoke a declaration.
- 20 (4) Regulations made for the purposes of subsection (1) must provide  
21 that, if a declaration of an eligible offsets project is revoked in  
22 accordance with those regulations, the Administrator must give a  
23 copy of the revocation to:  
24 (a) the project proponent; and  
25 (b) the relevant land registration official.

26 **35 Unilateral revocation of declaration of eligible offsets project—**  
27 **eligibility requirements not met etc.**

- 28 (1) The regulations may make provision for and in relation to  
29 empowering the Administrator to revoke a declaration under  
30 section 27 in relation to an offsets project.

**Section 36**

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- 1 (2) Regulations made for the purposes of subsection (1) must not  
2 empower the Administrator to revoke a declaration unless the  
3 Administrator is satisfied that the project does not meet a  
4 requirement that is:  
5 (a) set out in subsection 27(5); and  
6 (b) specified in regulations made for the purposes of this  
7 paragraph.
- 8 (3) Regulations made for the purposes of subsection (1) must require  
9 the Administrator to consult the project proponent for the project  
10 before deciding to revoke a declaration.
- 11 (4) Regulations made for the purposes of subsection (1) must provide  
12 that, if a declaration of an eligible offsets project is revoked in  
13 accordance with those regulations, the Administrator must give a  
14 copy of the revocation to:  
15 (a) the project proponent; and  
16 (b) the relevant land registration official.

17 **36 Unilateral revocation of declaration of eligible offsets project—**  
18 **project proponent ceases to be a recognised offsets entity**

- 19 (1) The regulations may make provision for and in relation to  
20 empowering the Administrator to revoke a declaration under  
21 section 27 in relation to an offsets project.
- 22 (2) Regulations made for the purposes of subsection (1) must not  
23 empower the Administrator to revoke a declaration unless:  
24 (a) the project proponent for the project ceases to be a  
25 recognised offsets entity; and  
26 (b) 90 days pass after the cessation, and the person who, at the  
27 end of that 90-day period, is the project proponent for the  
28 project is not a recognised offsets entity.
- 29 (3) Regulations made for the purposes of subsection (1) must require  
30 the Administrator to consult the project proponent for the project  
31 before deciding to revoke a declaration.
- 32 (4) Regulations made for the purposes of subsection (1) must provide  
33 that, if a declaration of an eligible offsets project is revoked in



1 accordance with those regulations, the Administrator must give a  
2 copy of the revocation to:

- 3 (a) the project proponent; and  
4 (b) the relevant land registration official.

5 **37 Unilateral revocation of declaration of eligible offsets project—**  
6 **person responsible for carrying out project ceases to be**  
7 **the project proponent**

- 8 (1) The regulations may make provision for and in relation to  
9 empowering the Administrator to revoke a declaration under  
10 section 27 in relation to an offsets project.
- 11 (2) Regulations made for the purposes of subsection (1) must not  
12 empower the Administrator to revoke a declaration unless:  
13 (a) the person who is responsible for carrying out the project  
14 ceases to be the project proponent for the project; and  
15 (b) 90 days pass after the cessation, and the person who, at the  
16 end of that 90-day period, is responsible for carrying out the  
17 project is not:  
18 (i) the project proponent for the project; and  
19 (ii) a recognised offsets entity.
- 20 (3) Regulations made for the purposes of subsection (1) must require  
21 the Administrator to consult the project proponent for the project  
22 before deciding to revoke a declaration.
- 23 (4) Regulations made for the purposes of subsection (1) must provide  
24 that, if a declaration of an eligible offsets project is revoked in  
25 accordance with those regulations, the Administrator must give a  
26 copy of the revocation to:  
27 (a) the person who is responsible for carrying out the project;  
28 and  
29 (b) the relevant land registration official.

Section 38

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1     **38 Unilateral revocation of declaration of eligible offsets project—**  
2             **false or misleading information**

- 3             (1) The regulations may make provision for and in relation to  
4                 empowering the Administrator to revoke a declaration under  
5                 section 27 in relation to an offsets project.
- 6             (2) Regulations made for the purposes of subsection (1) must not  
7                 empower the Administrator to revoke a declaration unless:
- 8                 (a) information was given by a person to the Administrator in  
9                     connection with the project; and
- 10                 (b) the information was:
- 11                     (i) contained in an application under this Act or the  
12                         regulations; or
- 13                     (ii) given in connection with an application under this Act  
14                         or the regulations; or
- 15                     (iii) contained in an offsets report; or
- 16                     (iv) contained in a notification under Part 6; and
- 17                 (c) the information was false or misleading in a material  
18                     particular.
- 19             (3) Regulations made for the purposes of subsection (1) must require  
20                 the Administrator to consult the project proponent for the project  
21                 before deciding to revoke a declaration.
- 22             (4) Regulations made for the purposes of subsection (1) must provide  
23                 that, if a declaration of an eligible offsets project is revoked in  
24                 accordance with those regulations, the Administrator must give a  
25                 copy of the revocation to:
- 26                 (a) the project proponent; and
- 27                 (b) the relevant land registration official.
- 28

1 **Division 5—Entries in title registers**

2 **39 Entries in title registers—general**

3 *Scope*

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

5 *Entries*

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

15 **40 Entries in title registers—land subject to carbon maintenance**  
16 **obligation**

17 *Scope*

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

20 *Entries*

- 21 (2) The relevant land registration official may make such entries or  
22 notations in or on registers or other documents kept by the official  
23 (in electronic form or otherwise) as the official thinks appropriate  
24 for the purposes of drawing the attention of persons to the  
25 obligation.  
26

1 **Division 6—Additionality test**

2 **41 Additionality test**

- 3 (1) For the purposes of this Act, an offsets project *passes the*  
4 *additionality test* if:  
5 (a) the project is of a kind specified in the regulations; and  
6 (b) the project is not required to be carried out by or under a law  
7 of the Commonwealth, a State or a Territory.
- 8 (2) Before recommending to the Governor-General that regulations  
9 should be made for the purposes of paragraph (1)(a) specifying a  
10 particular kind of project, the Minister must request the Domestic  
11 Offsets Integrity Committee to advise the Minister about whether  
12 such a project should, or should not, be specified in those  
13 regulations.
- 14 (3) In deciding whether to recommend to the Governor-General that  
15 regulations should be made for the purposes of paragraph (1)(a)  
16 specifying a particular kind of project, the Minister must have  
17 regard to:  
18 (a) whether carrying out such a project is not common practice  
19 in:  
20 (i) the relevant industry or the relevant part of the relevant  
21 industry; or  
22 (ii) the kind of environment in which such a project is to be  
23 carried out; and  
24 (b) whether, apart from Part 2, carrying out such a project would  
25 not be common practice in:  
26 (i) the relevant industry or the relevant part of the relevant  
27 industry; or  
28 (ii) the kind of environment in which such a project is to be  
29 carried out; and  
30 (c) any advice given by the Domestic Offsets Integrity  
31 Committee under subsection (2); and  
32 (d) such other matters (if any) as the Minister considers relevant.

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- 1 (4) Paragraph (1)(a) of this section does not, by implication, limit the  
2 application of subsection 13(3) of the *Legislative Instruments Act*  
3 *2003* to another instrument under this Act.
- 4 (5) If:
- 5 (a) the Domestic Offsets Integrity Committee gives advice to the  
6 Minister under subsection (2) in relation to a particular kind  
7 of project; and
- 8 (b) the Minister decides:
- 9 (i) to recommend to the Governor-General that regulations  
10 should be made for the purposes of paragraph (1)(a)  
11 specifying that kind of project; or
- 12 (ii) not to recommend to the Governor-General that  
13 regulations should be made for the purposes of  
14 paragraph (1)(a) specifying that kind of project;
- 15 the Minister must, as soon as practicable after making the decision,  
16 cause a copy of the Domestic Offset Integrity Committee's advice  
17 under subsection (2) to be published on the Department's website.  
18

**Part 3** Eligible offsets projects

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

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

4 **42 Net total number of Australian carbon credit units issued in**  
5 **relation to an eligible offsets project**

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

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

11

1 **Division 8—Applicable carbon sequestration right**

2 **43 Applicable carbon sequestration right**

3 *Torrens system land*

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

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

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

- 19 (2) For the purposes of the application of this Act to a sequestration  
20 offsets project, if:  
21 (a) an area of land is a project area for the project; and  
22 (b) the area of land is Torrens system land; and  
23 (c) a person has the exclusive legal right to obtain the benefit  
24 (whether present or future) of sequestration of carbon in the  
25 relevant carbon pool on the area of land; and  
26 (d) the right is registered under a Torrens system of registration;  
27 and  
28 (e) under a law of a State or Territory, the right is, or is taken to  
29 be, an estate or interest in land;

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

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

**Part 3** Eligible offsets projects

**Division 8** Applicable carbon sequestration right

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

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

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

18 *Crown land that is not Torrens system land*

- 19 (4) For the purposes of the application of this Act to a sequestration  
20 offsets project, if:  
21 (a) an area of land is a project area for the project; and  
22 (b) the area of land is Crown land in a State or Territory; and  
23 (c) the area of land is not Torrens system land; and  
24 (d) a person (other than the Commonwealth, the State, the  
25 Territory or a statutory authority of the Commonwealth, the  
26 State or the Territory) holds a legal estate or interest in the  
27 area of land; and  
28 (e) as a result of holding the estate or interest, the person has the  
29 exclusive legal right to obtain the benefit (whether present or  
30 future) of sequestration of carbon in the relevant carbon pool  
31 on the area of land;

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

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



- 1 (5) For the purposes of the application of this Act to a sequestration  
2 offsets project, if:  
3 (a) an area of land is a project area for the project; and  
4 (b) the area of land is Crown land in a State or Territory; and  
5 (c) the area of land is not Torrens system land; and  
6 (d) a person (other than the Commonwealth, the State, the  
7 Territory or a statutory authority of the Commonwealth, the  
8 State or the Territory) has the exclusive legal right to obtain  
9 the benefit (whether present or future) of sequestration of  
10 carbon in the relevant carbon pool on the area of land; and  
11 (e) under a law of the State or Territory, the right is, or is taken  
12 to be, an estate or interest in land;  
13 the exclusive right is the *applicable carbon sequestration right*  
14 held by the person in relation to the project area.

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

- 16 (6) For the purposes of the application of this Act to a sequestration  
17 offsets project, if:  
18 (a) an area of land is a project area for the project; and  
19 (b) the area of land is Crown land in a State or Territory; and  
20 (c) the area of land is not Torrens system land; and  
21 (d) a person (other than the Commonwealth, the State, the  
22 Territory or a statutory authority of the Commonwealth, the  
23 State or the Territory) has the exclusive legal right to obtain  
24 the benefit (whether present or future) of sequestration of  
25 carbon in the relevant carbon pool on the area of land; and  
26 (e) under a law of the State or Territory, the right runs with the  
27 relevant land; and  
28 (f) it is not the case that under a law of the State or Territory, the  
29 right is, or is taken to be, an estate or interest in land;  
30 the exclusive right is the *applicable carbon sequestration right*  
31 held by the person in relation to the project area.

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

- 33 (7) For the purposes of this Act, if:  
34 (a) an area of land is Crown land; and  
35 (b) the area of land is not Torrens system land; and

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- 1 (c) as a result of the area being Crown land:  
2 (i) the Commonwealth; or  
3 (ii) a statutory authority of the Commonwealth;  
4 has the exclusive legal right to obtain the benefit (whether  
5 present or future) of sequestration of carbon dioxide by trees  
6 on the area of land;  
7 the exclusive right is the ***carbon sequestration right*** held by the  
8 Commonwealth or statutory authority, as the case may be, in  
9 relation to the land.

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

- 11 (8) For the purposes of the application of this Act to a sequestration  
12 offsets project, if:  
13 (a) an area of land is a project area for the project; and  
14 (b) the area of land is Crown land in a State or Territory; and  
15 (c) the area of land is not Torrens system land; and  
16 (d) as a result of the area of land being Crown land:  
17 (i) the State or Territory; or  
18 (ii) a statutory authority of the State or Territory;  
19 has the exclusive legal right to obtain the benefit (whether  
20 present or future) of sequestration of carbon in the relevant  
21 carbon pool on the area of land;  
22 the exclusive right is the ***applicable carbon sequestration right***  
23 held by the State, Territory or statutory authority, as the case may  
24 be, in relation to the project area.

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

26 *Native title land*

- 27 (9) For the purposes of the application of this Act to a sequestration  
28 offsets project, if:  
29 (a) an area of land is a project area for the project; and  
30 (b) the area of land is native title land; and  
31 (c) there is a registered native title body corporate for the area of  
32 land; and  
33 (d) as a result of holding the native title, the native title holder  
34 has the exclusive legal right to obtain the benefit (whether

- 1 present or future) of sequestration of carbon dioxide in the  
2 relevant carbon pool on the area of land;  
3 then:  
4 (e) subsections (1), (2), (3), (4), (5), (6), (7) and (8) do not apply  
5 in relation to the area of land; and  
6 (f) the native title is the ***applicable carbon sequestration right***  
7 held by the native title holder in relation to the project area.
- 8 (10) For the purposes of the application of this Act to a sequestration  
9 offsets project, if:  
10 (a) an area of land is a project area for the project; and  
11 (b) the area of land is native title land; and  
12 (c) as a result of holding the native title, the native title holder  
13 has the exclusive legal right to obtain the benefit (whether  
14 present or future) of sequestration of carbon dioxide in the  
15 relevant carbon pool on the area of land; and  
16 (d) the exclusive right can be exercised by another person under  
17 a registered indigenous land use agreement that is:  
18 (i) with the registered native title body corporate in relation  
19 to the area of land; and  
20 (ii) covered by section 24BA of the *Native Title Act 1993*;  
21 then:  
22 (e) subsections (1), (2), (3), (4), (5), (6), (7) and (8) do not apply  
23 in relation to the area of land; and  
24 (f) the exclusive right is the ***applicable carbon sequestration***  
25 ***right*** held by the other person in relation to the project area.

26 *Regulations*

- 27 (11) For the purposes of the application of this Act to a sequestration  
28 offsets project, if:  
29 (a) an area of land is a project area for the project; and  
30 (b) a person has:  
31 (i) a prescribed right in relation to the area of land; or  
32 (ii) a prescribed estate in the area of land; or  
33 (iii) a prescribed interest in the area of land;

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1                   the prescribed right, prescribed estate or prescribed interest, as the  
2                   case may be, is the *applicable carbon sequestration right* held by  
3                   the person in relation to the project area.  
4

1 **Division 9—Eligible interest in an area of land**

2 **44 Eligible interest in an area of land—Torrens system land**

3 *Scope*

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

6 *Eligible interest*

- 7 (2) For the purposes of this Act, if:  
8 (a) a person holds an estate in fee simple, or any other legal  
9 estate or interest, in the whole or a part of the area of land;  
10 and  
11 (b) the estate or interest is registered under a Torrens system of  
12 registration;  
13 the estate or interest is an *eligible interest* held by the person in the  
14 area of land.

- 15 (3) For the purposes of this Act, if:  
16 (a) under subsection (2), a person holds an eligible interest in the  
17 area of land; and  
18 (b) another person:  
19 (i) is a mortgagee of the eligible interest, where the  
20 mortgage is registered under a Torrens system of  
21 registration; or  
22 (ii) a chargee of the eligible interest, where the charge is  
23 registered under a Torrens system of registration;  
24 the mortgage or charge is an *eligible interest* held by the other  
25 person in the area of land.

- 26 (4) For the purposes of this Act, if the area of land is Crown land, the  
27 Crown lands Minister of the State or Territory holds an *eligible*  
28 *interest* in the area of land.

- 29 (5) The regulations may provide that, for the purposes of this Act, a  
30 person specified in, or ascertained in accordance with, the  
31 regulations holds an *eligible interest* in the area of land.

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- 1 (6) For the purposes of this Act, if:  
2 (a) the area of land is land rights land; and  
3 (b) any of the following subparagraphs applies to the area of  
4 land:  
5 (i) a lease is in force over the land, and the grant of the  
6 lease took place under a law of the Commonwealth that  
7 makes provision for the grant of such things only to, or  
8 for the benefit of, Aboriginal peoples or Torres Strait  
9 Islanders;  
10 (ii) subparagraph (i) does not apply, and the land is held by  
11 the Commonwealth;  
12 (iii) subparagraph (i) does not apply, and the land is held by  
13 a statutory authority of the Commonwealth;  
14 then:  
15 (c) if subparagraph (b)(i) applies—the Minister who administers  
16 the law mentioned in that subparagraph holds an *eligible*  
17 *interest* in the area of land; or  
18 (d) if subparagraph (b)(ii) applies—the Minister who administers  
19 the *Aboriginal Land Rights (Northern Territory) Act 1976*  
20 holds an *eligible interest* in the area of land; or  
21 (e) if subparagraph (b)(iii) applies—the Minister who  
22 administers the Act that establishes the statutory authority  
23 holds an *eligible interest* in the area of land.  
24 (7) For the purposes of this Act, if:  
25 (a) the area of land is land rights land in a State or Territory; and  
26 (b) the area of land is not covered by subsection (6); and  
27 (c) the area of land is not freehold land rights land;  
28 the Crown lands Minister of the State or Territory holds an *eligible*  
29 *interest* in the area of land.

30 **45 Eligible interest in an area of land—Crown land that is not**  
31 **Torrens system land**

32 *Scope*

- 33 (1) This section applies to an area of land in a State or Territory if the  
34 area of land:

- 1 (a) is Crown land; and  
2 (b) is not Torrens system land.

3 *Eligible interest*

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

- 9 (3) For the purposes of this Act, if:  
10 (a) a person (other than the State or Territory) holds a legal  
11 estate or interest (the *relevant estate or interest*) in the whole  
12 or a part of the area of land; and  
13 (b) any of the following conditions are satisfied:  
14 (i) the relevant estate or interest came into existence as a  
15 result of a grant by the Crown in any capacity;  
16 (ii) the relevant estate or interest was derived from an estate  
17 or interest that came into existence as a result of a grant  
18 by the Crown in any capacity;  
19 (iii) the relevant estate or interest was created by or under a  
20 law of the Commonwealth, a State or a Territory;  
21 (iv) the relevant estate or interest was derived from an estate  
22 or interest that was created by or under a law of the  
23 Commonwealth, a State or a Territory;  
24 the relevant estate or interest is an *eligible interest* held by the  
25 person in the area of land.

- 26 (4) For the purposes of this Act, if:  
27 (a) under subsection (3), a person holds an eligible interest in the  
28 area of land; and  
29 (b) another person:  
30 (i) is a mortgagee of the eligible interest; or  
31 (ii) is a chargee of the eligible interest;  
32 the mortgage or charge is an *eligible interest* held by the other  
33 person in the area of land.

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- 1 (5) The regulations may provide that, for the purposes of this Act, a  
2 person specified in, or ascertained in accordance with, the  
3 regulations holds an *eligible interest* in the area of land.
- 4 (6) For the purposes of this Act, if:  
5 (a) the area of land is land rights land; and  
6 (b) any of the following subparagraphs applies to the area of  
7 land:  
8 (i) a lease is in force over the land, and the grant of the  
9 lease took place under a law of the Commonwealth that  
10 makes provision for the grant of such things only to, or  
11 for the benefit of, Aboriginal peoples or Torres Strait  
12 Islanders;  
13 (ii) subparagraph (i) does not apply, and the land is held by  
14 the Commonwealth;  
15 (iii) subparagraph (i) does not apply, and the land is held by  
16 a statutory authority of the Commonwealth;  
17 then:  
18 (c) if subparagraph (b)(i) applies—the Minister who administers  
19 the law mentioned in that subparagraph holds an *eligible*  
20 *interest* in the area of land; or  
21 (d) if subparagraph (b)(ii) applies—the Minister who administers  
22 the *Aboriginal Land Rights (Northern Territory) Act 1976*  
23 holds an *eligible interest* in the area of land; or  
24 (e) if subparagraph (b)(iii) applies—the Minister who  
25 administers the Act that establishes the statutory authority  
26 holds an *eligible interest* in the area of land.
- 27 (7) For the purposes of this Act, if:  
28 (a) the area of land is land rights land in a State or Territory; and  
29 (b) the area of land is not covered by subsection (6); and  
30 (c) the area of land is not freehold land rights land;  
31 the Crown lands Minister of the State or Territory holds an *eligible*  
32 *interest* in the area of land.  
33



1 **Division 10—Native title land**

2 **46 Registered native title bodies corporate—deemed project**  
3 **proponent**

4 *Exclusive possession native title land*

5 (1) For the purposes of the application of this Act to an offsets project,  
6 if the following conditions are satisfied in relation to the project  
7 area, or each of the project areas, for the offsets project:

8 (a) the project area is exclusive possession native title land;

9 (b) there is a registered native title body corporate for the project  
10 area;

11 (c) no person (other than a body politic, the common law holders  
12 or the registered native title body corporate) has the legal  
13 right to carry out the project;

14 (d) no person (other than a body politic, the common law holders  
15 or the registered native title body corporate) holds the  
16 applicable carbon sequestration right in relation to the project  
17 area;

18 then:

19 (e) the registered native title body corporate for the project area  
20 is taken to be the project proponent for the offsets project;  
21 and

22 (f) no other person is taken to be the project proponent for the  
23 project; and

24 (g) paragraphs 27(4)(h) and (i) do not apply to the offsets  
25 project.

26 Note: Paragraphs 27(4)(h) and (i) deal with the issue of certificates in  
27 relation to Crown land.

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

30 (2) For the purposes of the application of this Act to an offsets project,  
31 if the following conditions are satisfied in relation to the project  
32 area, or each of the project areas, for the offsets project:

33 (a) the project area is native title land;

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- 1 (b) there is a registered native title body corporate for the project  
2 area;
- 3 (c) the native title holder has the legal right to carry out the  
4 project;
- 5 (d) the native title holder holds the applicable carbon  
6 sequestration right in relation to the project area;
- 7 (e) subsection (1) does not apply to the project;
- 8 then:
- 9 (f) the registered native title body corporate for the project area  
10 is taken to be the project proponent for the offsets project;  
11 and
- 12 (g) no other person is taken to be the project proponent for the  
13 project; and
- 14 (h) subparagraphs 27(4)(h)(vii) and (i)(v) have effect, in relation  
15 to the project, as if a reference in those subparagraphs to the  
16 applicant were a reference to the native title holder.
- 17 Note: Paragraphs 27(4)(h) and (i) deal with the issue of certificates in  
18 relation to Crown land.

19 **47 Administrator to notify Crown lands Minister of declaration of**  
20 **eligible offsets project**

21 *Scope*

- 22 (1) This section applies if:
- 23 (a) a registered native title body corporate is taken, under  
24 subsection 46(1), to be the project proponent for an offsets  
25 project; and
- 26 (b) the project area is, or any of the project areas are, in a  
27 particular State or Territory; and
- 28 (c) the project area is, or any of the project areas are, Crown  
29 land; and
- 30 (d) the project area is not, or the project areas are not, Torrens  
31 system land; and
- 32 (e) the Administrator makes a declaration under section 27 in  
33 relation to the project.

1                                    *Notification*

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

5                                    **48 Designation of special native title account**

6                                    *Scope*

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

10                                   *Request for special native title account*

- 11                                   (2) The registered native title body corporate may:  
12                                        (a) request the Administrator, under regulations made for the  
13                                        purposes of subsection 10(1) of the *Australian National*  
14                                        *Registry of Emissions Units Act 2011*, to open a Registry  
15                                        account in the name of the registered native title body  
16                                        corporate; and  
17                                        (b) request the Administrator to designate that account as the  
18                                        special native title account for the eligible offsets project.
- 19                                   (3) A request under paragraph (2)(b) must:  
20                                        (a) be in writing; and  
21                                        (b) be in a form approved, in writing, by the Administrator; and  
22                                        (c) be accompanied by such information as is specified in the  
23                                        regulations; and  
24                                        (d) be accompanied by such other documents (if any) as are  
25                                        specified in the regulations; and  
26                                        (e) be accompanied by the fee (if any) specified in the  
27                                        regulations.
- 28                                   (4) The approved form of request may provide for verification by  
29                                    statutory declaration of statements in requests.
- 30                                   (5) A fee specified under paragraph (3)(e) must not be such as to  
31                                    amount to taxation.

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1 *Designation of special native title account*

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

5 **49 Issue of Australian carbon credit units to special native title**  
6 **account**

7 *Scope*

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

11 *Application for issue of Australian carbon credit units*

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

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

18 *Issue of Australian carbon credit units*

- 19 (3) If:  
20 (a) a special native title account for the project is kept in the  
21 name of the registered native title body corporate; and  
22 (b) apart from this subsection, the Administrator is required  
23 under section 11 to issue one or more Australian carbon  
24 credit units to the registered native title body corporate in  
25 relation to the eligible offsets project;  
26 then:  
27 (c) the Administrator must comply with the requirement by  
28 issuing the units to the registered native title body corporate  
29 and making an entry for the units in the special native title  
30 account; and  
31 (d) subsections 11(5) and (6) do not apply to the issue of the  
32 units.

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

## 8 **50 Units held in special native title account**

### 9 *Scope*

- 10 (1) This section applies to a Registry account that has been designated  
11 as the special native title account for an eligible offsets project.

### 12 *Units held in account*

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

## 17 **51 Regulations about consulting common law holders etc.**

- 18 (1) The regulations may make provision for a registered native title  
19 body corporate to consult, and act in accordance with the directions  
20 of, the common law holders in relation to anything done by the  
21 registered native title body corporate under, or in connection with:  
22 (a) this Act or the regulations; or  
23 (b) the *Australian National Registry of Emissions Units Act 2011*  
24 or regulations under that Act.
- 25 (2) The regulations may make provision for a registered native title  
26 body corporate to be the agent of the common law holders for the  
27 purposes of giving a consent under this Act or the regulations.  
28

1 **Division 11—Freehold land rights land**

2 **52 Administrator to notify Crown lands Minister of declaration of**  
3 **eligible offsets project**

4 *Scope*

- 5 (1) This section applies if:
- 6 (a) the Administrator makes a declaration under section 27 in  
7 relation to an offsets project; and
  - 8 (b) the project area is, or any of the project areas are, freehold  
9 land rights land in a particular State or Territory; and
  - 10 (c) the project area is, or any of the project areas are, Crown  
11 land; and
  - 12 (d) the project area is not, or the project areas are not, Torrens  
13 system land.

14 *Notification*

- 15 (2) As soon as practicable after making the declaration, the  
16 Administrator must notify the Crown lands Minister of the State or  
17 Territory, in writing, of the making of the declaration.  
18

1 **Division 12—Types of projects**

2 **53 Emissions avoidance offsets projects**

3 (1) For the purposes of this Act, a project is an *emissions avoidance*  
4 *offsets project* if it is:

- 5 (a) an agricultural emissions avoidance project; or  
6 (b) a landfill legacy emissions avoidance project; or  
7 (c) an introduced animal emissions avoidance project; or  
8 (d) a project of a kind specified in the regulations.

9 (2) Paragraph (1)(d) does not, by implication, affect the application of  
10 subsection 13(3) of the *Legislative Instruments Act 2003* to another  
11 instrument under this Act.

12 (3) For the purposes of this Act, a project is not an *emissions*  
13 *avoidance offsets project* if the project is a sequestration offsets  
14 project.

15 **54 Sequestration offsets projects**

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

- 18 (a) to remove carbon dioxide from the atmosphere by  
19 sequestering carbon in one or more of the following:  
20 (i) living biomass;  
21 (ii) dead organic matter;  
22 (iii) soil; or  
23 (b) to remove carbon dioxide from the atmosphere by  
24 sequestering carbon in, and to avoid emissions of  
25 greenhouses gases from, one or more of the following:  
26 (i) living biomass;  
27 (ii) dead organic matter;  
28 (iii) soil.

1       **55 Kyoto offsets projects and non-Kyoto offsets projects etc.**

2                   *Kyoto offsets projects*

3           (1) For the purposes of this Act, an offsets project is a ***Kyoto offsets***  
4           ***project*** if it is:

- 5                   (a) an agricultural emissions avoidance project; or  
6                   (b) a landfill legacy emissions avoidance project; or  
7                   (c) an offsets project of a kind specified in the regulations.

8           (2) Subsection (1) has effect subject to subsection (3).

9           (3) For the purposes of this Act, an offsets project is not a ***Kyoto***  
10           ***offsets project*** unless:

11                   (a) if the project is a sequestration offsets project:

- 12                           (i) to the extent to which the project is a project to remove  
13                           carbon dioxide from the atmosphere—the removal can  
14                           be used to meet Australia’s climate change targets under  
15                           the Kyoto Protocol or an international agreement (if  
16                           any) that is the successor (whether immediate or  
17                           otherwise) to the Kyoto Protocol; and

- 18                           (ii) to the extent (if any) to which the project is a project to  
19                           avoid emissions of greenhouse gases—the avoidance  
20                           can be used to meet Australia’s climate change targets  
21                           under the Kyoto Protocol or an international agreement  
22                           (if any) that is the successor (whether immediate or  
23                           otherwise) to the Kyoto Protocol; or

24                   (b) if the project is an emissions avoidance offsets project to  
25                   avoid emissions of one or more greenhouse gases—the  
26                   avoidance can be used to meet Australia’s climate change  
27                   targets under:

- 28                           (i) the Kyoto Protocol; or  
29                           (ii) an international agreement (if any) that is the successor  
30                           (whether immediate or otherwise) to the Kyoto  
31                           Protocol.

32           (4) Paragraph (1)(c) does not, by implication, affect the application of  
33           subsection 13(3) of the *Legislative Instruments Act 2003* to another  
34           instrument under this Act.



1 *Non-Kyoto offsets projects*

- 2 (5) For the purposes of this Act, an offsets project is a ***non-Kyoto***  
3 ***offsets project*** if it is an offsets project other than a Kyoto offsets  
4 project.

5 *Dissection of project*

- 6 (6) For the purposes of this Act, if, apart from this subsection, an  
7 offsets project (the ***overall project***):  
8 (a) is partly a Kyoto offsets project; and  
9 (b) is partly a non-Kyoto offsets project;  
10 then:  
11 (c) the overall project, to the extent to which it is a Kyoto offsets  
12 project, is taken to be an offsets project in its own right; and  
13 (d) the overall project, to the extent to which it is a non-Kyoto  
14 offsets project, is taken to be an offsets project in its own  
15 right.

16 It is immaterial whether the Kyoto offsets project and the  
17 non-Kyoto offsets project have the same project area or areas.

18 **56 Excluded offsets projects**

- 19 (1) For the purposes of this Act, an offsets project is an ***excluded***  
20 ***offsets project*** if it is a project of a kind specified in the  
21 regulations.
- 22 (2) In deciding whether to recommend to the Governor-General that  
23 regulations should be made for the purposes of subsection (1)  
24 specifying a particular kind of project, the Minister must have  
25 regard to whether there is a significant risk that that kind of project  
26 will have a significant adverse impact on one or more of the  
27 following:  
28 (a) the availability of water;  
29 (b) the conservation of biodiversity;  
30 (c) employment;  
31 (d) the local community;  
32 in, or in the vicinity of, the project area, or any of the project areas,  
33 for that kind of project.

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- 1                   (3) Subsection (1) of this section does not, by implication, limit the  
2                   application of subsection 13(3) of the *Legislative Instruments Act*  
3                   2003 to another instrument under this Act.  
4

1 **Division 13—Restructure of eligible offsets projects**

2 **57 Restructure of eligible offsets projects**

3 (1) For the purposes of this section, if:

4 (a) as the result of the variation or revocation of a section 27  
5 declaration, an area of land (the *relevant area*) ceases to be,  
6 or ceases to be part of, the project area, or any of the project  
7 areas, for an eligible offsets project that:

8 (i) is a sequestration offsets project; and

9 (ii) is not a native forest protection project; and

10 (b) as a result of the making or variation of another section 27  
11 declaration, the relevant area becomes, or becomes part of,  
12 the project area, or any of the project areas, for another  
13 eligible offsets project that:

14 (i) is a sequestration offsets project; and

15 (ii) is not a native forest protection project;

16 then:

17 (c) the project mentioned in paragraph (a) is the *transferor*  
18 *offsets project*; and

19 (d) the project mentioned in paragraph (b) is the *transferee*  
20 *offsets project*.

21 *Regulations*

22 (2) The regulations may make provision for or in relation to the  
23 adjustment of any or all of the following:

24 (a) the calculation of a unit entitlement in relation to the  
25 transferee offsets project using the formula in subsection  
26 16(2);

27 (b) the calculation of a unit entitlement in relation to the  
28 transferor offsets project using the formula in subsection  
29 16(2);

30 (c) the calculation of the net total number of Australian carbon  
31 credit units issued in relation to the transferee offsets project  
32 in accordance with Part 2;

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- 1 (d) the calculation of the net total number of Australian carbon  
2 credit units issued in relation to the transferor offsets project  
3 in accordance with Part 2;  
4 (e) the duration of a crediting period for the transferee offsets  
5 project;  
6 (f) the duration of a reporting period for the transferee offsets  
7 project.

8 *Determinations*

- 9 (3) Regulations made for the purposes of subsection (2) may empower  
10 the Administrator to determine that, whenever it is necessary to  
11 calculate a unit entitlement in relation to the transferor offsets  
12 project using the formula in subsection 16(2), that subsection has  
13 effect, in relation to the transferor offsets project, as if the net  
14 abatement number were decreased by the number specified in the  
15 determination.
- 16 (4) Regulations made for the purposes of subsection (2) may empower  
17 the Administrator to determine that, whenever it is necessary to  
18 calculate a unit entitlement in relation to the transferee offsets  
19 project using the formula in subsection 16(2), that subsection has  
20 effect, in relation to the transferee offsets project, as if the net  
21 abatement number were increased by the number specified in the  
22 determination.
- 23 (5) Regulations made for the purposes of subsection (2) may empower  
24 the Administrator to determine that, whenever it is necessary to  
25 work out the net total number of Australian carbon credit units  
26 issued in relation to the transferor offsets project, this Act has  
27 effect, in relation to the transferor offsets project, as if the net total  
28 number of Australian carbon credit units issued in relation to the  
29 project in accordance with Part 2 were decreased by the number  
30 specified in the determination.
- 31 (6) Regulations made for the purposes of subsection (2) may empower  
32 the Administrator to determine that, whenever it is necessary to  
33 work out the net total number of Australian carbon credit units  
34 issued in relation to the transferee offsets project, this Act has  
35 effect, in relation to the transferee offsets project, as if the net total  
36 number of Australian carbon credit units issued in relation to the

1 project in accordance with Part 2 were increased by the number  
2 specified in the determination.

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

4 *Determination is not a legislative instrument*

5 (8) A determination made under regulations made for the purposes  
6 subsection (2) is not a legislative instrument.

7 **58 Restructure of an eligible offsets project that is subject to the**  
8 **voluntary automatic unit cancellation regime**

9 *Scope*

10 (1) This section applies if, as the result of the variation or revocation  
11 of a section 27 declaration, an area of land (the *relevant area*)  
12 ceases to be, or ceases to be part of, the project area, or any of the  
13 project areas, for an eligible offsets project that is or was subject to  
14 the voluntary automatic unit cancellation regime.

15 Note: For when an eligible offsets project is subject to the voluntary  
16 automatic unit cancellation regime, see paragraph 27(3)(e).

17 *Restriction*

18 (2) The Administrator must not make or vary another section 27  
19 declaration if doing so would result in the relevant area becoming,  
20 or becoming part of, the project area, or any of the project areas,  
21 for another eligible offsets project that is not subject to the  
22 voluntary automatic unit cancellation regime.  
23

1 **Part 4—Recognised offsets entities**  
2

3 **59 Simplified outline**

4 The following is a simplified outline of this Part:

- 5 

<ul style="list-style-type: none"><li>• The Administrator may recognise a person as an offsets entity.</li></ul>
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6 **60 Application for recognition as an offsets entity**

- 7 (1) A person may apply to the Administrator for recognition as an  
8 offsets entity.
- 9 (2) A person is not entitled to make an application before the 28th day  
10 after the commencement of this section.

11 **61 Form of application**

- 12 (1) An application must:  
13 (a) be in writing; and  
14 (b) be in a form approved, in writing, by the Administrator; and  
15 (c) be accompanied by such information as is specified in the  
16 regulations; and  
17 (d) be accompanied by such documents (if any) as are specified  
18 in the regulations; and  
19 (e) be accompanied by the fee (if any) specified in the  
20 regulations.
- 21 (2) The approved form of application may provide for verification by  
22 statutory declaration of statements in applications.
- 23 (3) A fee specified under paragraph (1)(e) must not be such as to  
24 amount to taxation.

25 **62 Further information**

- 26 (1) The Administrator may, by written notice given to an applicant,  
27 require the applicant to give the Administrator, within the period

1 specified in the notice, further information in connection with the  
2 application.

- 3 (2) If the applicant breaches the requirement, the Administrator may,  
4 by written notice given to the applicant:  
5 (a) refuse to consider the application; or  
6 (b) refuse to take any action, or any further action, in relation to  
7 the application.

### 8 **63 Withdrawal of application**

- 9 (1) An applicant may withdraw the application at any time before the  
10 Administrator makes a decision on the application.
- 11 (2) This Act does not prevent the applicant from making a fresh  
12 application.
- 13 (3) If:  
14 (a) the applicant withdraws the application; and  
15 (b) the applicant has paid a fee in relation to the application;  
16 the Administrator must, on behalf of the Commonwealth, refund  
17 the application fee.

### 18 **64 Recognition as an offsets entity**

#### 19 *Scope*

- 20 (1) This section applies if an application under section 60 has been  
21 made for recognition as an offsets entity.

#### 22 *Recognition*

- 23 (2) After considering the application, the Administrator may, by  
24 written notice given to the applicant, recognise the applicant as an  
25 offsets entity.

#### 26 *Criteria for recognition*

- 27 (3) The Administrator must not recognise the applicant as an offsets  
28 entity unless:

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- 1 (a) the Administrator is satisfied that the applicant is a fit and  
2 proper person, having regard to the following:
- 3 (i) whether the applicant has been convicted of an offence  
4 against a law of the Commonwealth, a State or a  
5 Territory, where the offence relates to dishonest  
6 conduct;
- 7 (ii) whether the applicant has been convicted of an offence  
8 against a law of the Commonwealth, a State or a  
9 Territory, where the offence relates to the conduct of a  
10 business;
- 11 (iii) whether the applicant has been convicted of an offence  
12 against section 136.1, 137.1 or 137.2 of the *Criminal*  
13 *Code*;
- 14 (iv) whether an order has been made against the applicant  
15 under section 76 of the *Competition and Consumer Act*  
16 *2010*;
- 17 (v) whether an order has been made against the applicant  
18 under section 224 of Schedule 2 to the *Competition and*  
19 *Consumer Act 2010*, as that section applies as a law of  
20 the Commonwealth, a State or a Territory;
- 21 (vi) whether the applicant has breached this Act or the  
22 associated provisions;
- 23 (vii) whether the applicant has breached the *Australian*  
24 *National Registry of Emissions Units Act 2011* or  
25 regulations under that Act;
- 26 (viii) whether the applicant has breached the *National*  
27 *Greenhouse and Energy Reporting Act 2007* or  
28 regulations under that Act;
- 29 (ix) if the applicant is a body corporate—whether an  
30 executive officer of the body corporate has been  
31 convicted of an offence against a law of the  
32 Commonwealth, a State or a Territory, where the  
33 offence relates to dishonest conduct;
- 34 (x) if the applicant is a body corporate—whether an  
35 executive officer of the body corporate has been  
36 convicted of an offence against a law of the  
37 Commonwealth, a State or a Territory, where the  
38 offence relates to the conduct of a business;



- 
- 1 (xi) if the applicant is a body corporate—whether an  
2 executive officer of the body corporate has been  
3 convicted of an offence against section 136.1, 137.1 or  
4 137.2 of the *Criminal Code*;
- 5 (xii) if the applicant is a body corporate—whether an order  
6 has been made against an executive officer of the body  
7 corporate under section 76 of the *Competition and*  
8 *Consumer Act 2010*;
- 9 (xiii) if the applicant is a body corporate—whether an order  
10 has been made against an executive officer of the body  
11 corporate under section 224 of Schedule 2 to the  
12 *Competition and Consumer Act 2010*, as that section  
13 applies as a law of the Commonwealth, a State or a  
14 Territory;
- 15 (xiv) if the applicant is a body corporate—whether an  
16 executive officer of the body corporate has breached  
17 this Act or the associated provisions;
- 18 (xv) if the applicant is a body corporate—whether an  
19 executive officer of the body corporate has breached the  
20 *Australian National Registry of Emissions Units Act*  
21 *2011* or regulations under that Act;
- 22 (xvi) if the applicant is a body corporate—whether an  
23 executive officer of the body corporate has breached the  
24 *National Greenhouse and Energy Reporting Act 2007* or  
25 regulations under that Act;
- 26 (xvii) such other matters (if any) as the Administrator  
27 considers relevant; and
- 28 (b) if the applicant is an individual—the Administrator is  
29 satisfied that the applicant is not an insolvent under  
30 administration; and
- 31 (c) if the applicant is a body corporate—the Administrator is  
32 satisfied that the applicant is not an externally-administered  
33 body corporate; and
- 34 (d) if the regulations specify one or more other eligibility  
35 requirements—the Administrator is satisfied that those  
36 requirements are met.
- 37 (4) Subparagraphs (3)(a)(i) to (xvi) do not limit  
38 subparagraph (3)(a)(xvii).
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1                                    *Timing*

- 2                    (5) The Administrator must take all reasonable steps to ensure that a  
3                    decision is made on the application:  
4                        (a) if the Administrator requires the applicant to give further  
5                                information under subsection 62(1) in relation to the  
6                                application—within 90 days after the applicant gave the  
7                                Administrator the information; or  
8                        (b) otherwise—within 90 days after the application was made.

9                                    *Refusal*

- 10                   (6) If the Administrator decides to refuse to recognise the applicant as  
11                   an offsets entity, the Administrator must give written notice of the  
12                   decision to the applicant.

13                                   *Spent convictions*

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

19                   **65 Cancellation of recognition**

20                                   *Cancellation*

- 21                   (1) The Administrator may cancel the recognition of a person as an  
22                   offsets entity if:  
23                       (a) the Administrator is satisfied that the person is not a fit and  
24                               proper person, having regard to the following:  
25                               (i) whether the person has been convicted of an offence  
26                                       against a law of the Commonwealth, a State or a  
27                                       Territory, where the offence relates to dishonest  
28                                       conduct;  
29                               (ii) whether the person has been convicted of an offence  
30                                       against a law of the Commonwealth, a State or a  
31                                       Territory, where the offence relates to the conduct of a  
32                                       business;

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- 1 (iii) whether the person has been convicted of an offence  
2 against section 136.1, 137.1 or 137.2 of the *Criminal*  
3 *Code*;
- 4 (iv) whether an order has been made against the person  
5 under section 76 of the *Competition and Consumer Act*  
6 *2010*;
- 7 (v) whether an order has been made against the person  
8 under section 224 of Schedule 2 to the *Competition and*  
9 *Consumer Act 2010*, as that section applies as a law of  
10 the Commonwealth, a State or a Territory;
- 11 (vi) whether the person has breached this Act or the  
12 associated provisions;
- 13 (vii) whether the person has breached the *Australian*  
14 *National Registry of Emissions Units Act 2011* or  
15 regulations under that Act;
- 16 (viii) whether the person has breached the *National*  
17 *Greenhouse and Energy Reporting Act 2007* or  
18 regulations under that Act;
- 19 (ix) if the person is a body corporate—whether an executive  
20 officer of the body corporate has been convicted of an  
21 offence against a law of the Commonwealth, a State or a  
22 Territory, where the offence relates to dishonest  
23 conduct;
- 24 (x) if the person is a body corporate—whether an executive  
25 officer of the body corporate has been convicted of an  
26 offence against a law of the Commonwealth, a State or a  
27 Territory, where the offence relates to the conduct of a  
28 business;
- 29 (xi) if the person is a body corporate—whether an executive  
30 officer of the body corporate has been convicted of an  
31 offence against section 136.1, 137.1 or 137.2 of the  
32 *Criminal Code*;
- 33 (xii) if the person is a body corporate—whether an order has  
34 been made against an executive officer of the body  
35 corporate under section 76 of the *Competition and*  
36 *Consumer Act 2010*;
- 37 (xiii) if the person is a body corporate—whether an order has  
38 been made against an executive officer of the body
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- 1 corporate under section 224 of Schedule 2 to the  
2 *Competition and Consumer Act 2010*, as that section  
3 applies as a law of the Commonwealth, a State or a  
4 Territory;
- 5 (xiv) if the person is a body corporate—whether an executive  
6 officer of the body corporate has breached this Act or  
7 the associated provisions;
- 8 (xv) if the person is a body corporate—whether an executive  
9 officer of the body corporate has breached the  
10 *Australian National Registry of Emissions Units Act*  
11 *2011* or regulations under that Act;
- 12 (xvi) if the person is a body corporate—whether an executive  
13 officer of the body corporate has breached the *National*  
14 *Greenhouse and Energy Reporting Act 2007* or  
15 regulations under that Act;
- 16 (xvii) such other matters (if any) as the Administrator  
17 considers relevant; or
- 18 (b) if the person is an individual—the Administrator is satisfied  
19 that the person is an insolvent under administration; or
- 20 (c) if the person is a body corporate—the Administrator is  
21 satisfied that the person is an externally-administered body  
22 corporate; or
- 23 (d) if the regulations specify one or more other grounds for  
24 cancellation—the Administrator is satisfied that at least one  
25 of those grounds is applicable to the person.
- 26 (2) Subparagraphs (1)(a)(i) to (xvi) do not limit  
27 subparagraph (1)(a)(xvii).
- 28 *Spent convictions*
- 29 (3) Nothing in this section affects the operation of Part VIIC of the  
30 *Crimes Act 1914* (which includes provisions that, in certain  
31 circumstances, relieve persons from the requirement to disclose  
32 spent convictions and require persons aware of such convictions to  
33 disregard them).

1     **66 Surrender of recognition**

2                     *Scope*

3             (1) This section applies if a person is recognised as an offsets entity.

4                     *Surrender*

5             (2) The person may, by written notice given to the Administrator,  
6                 surrender the person's recognition.

7             (3) The surrender takes effect on the day the notice is received by the  
8                 Administrator or, if a later day is specified in the notice, on that  
9                 later day.

10    **67 Recognition is not transferable**

11                     If a person is recognised as an offsets entity, the person's  
12                     recognition is not transferable.

13

1 **Part 5—Crediting periods**

2 **Division 1—Introduction**

3 **68 Simplified outline**

4 The following is a simplified outline of this Part:

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- If an eligible offsets project is a native forest protection project, the first crediting period for the project is:
    - (a) the period of 20 years; or
    - (b) if another period is specified in the regulations—  
that other period;that began when the declaration of the project under section 27 took effect.
  - If an eligible offsets project is not a native forest protection project, the first crediting period for the project is:
    - (a) the period of 7 years; or
    - (b) if another period is specified in the regulations—  
that other period;that began when the declaration of the project under section 27 took effect.
  - The Administrator may, on application by a project proponent, determine a subsequent crediting period for an eligible offsets project that is not a native forest protection project.

22 Note: Under section 15, the Administrator may only issue a certificate of  
23 entitlement to Australian carbon credit units in relation to a reporting  
24 period for an eligible offsets project if the reporting period is included  
25 in a crediting period for the project.  
26

1 **Division 2—First crediting period**

2 **69 First crediting period**

3 (1) For the purposes of this Act, the first *crediting period* for an  
4 eligible offsets project is:

5 (a) if the project is a native forest protection project:

6 (i) the period of 20 years; or

7 (ii) if another period is specified in the regulations—that  
8 other period;

9 that began when the declaration of the project under  
10 section 27 took effect; or

11 (b) if the project is not a native forest protection project:

12 (i) the period of 7 years; or

13 (ii) if another period is specified in the regulations—that  
14 other period;

15 that began when the declaration of the project under  
16 section 27 took effect.

17 (2) Regulations made for the purposes of subparagraph (1)(a)(ii) or  
18 (b)(ii) may specify different periods for different kinds of projects.  
19 This does not limit subsection 33(3A) of the *Acts Interpretation*  
20 *Act 1901*.  
21

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1 **Division 3—Subsequent crediting period**

2 **70 Application for subsequent crediting period**

3 *Scope*

- 4 (1) This section applies to an eligible offsets project if the project is  
5 not a native forest protection project.

6 *Application period*

- 7 (2) For the purposes of this section, an *application period* for an  
8 eligible offsets project is the period:  
9 (a) beginning 6 months before the end of a crediting period (the  
10 *relevant crediting period*) for the project; and  
11 (b) ending 6 months after the end of the relevant crediting  
12 period.

13 *Application*

- 14 (3) During an application period for the project, the project proponent  
15 for the project may apply to the Administrator for the  
16 determination of a specified period as a subsequent crediting  
17 period for the project.
- 18 (4) The specified period must be:  
19 (a) the period of 7 years; or  
20 (b) if another period is specified in the regulations—that other  
21 period;  
22 beginning immediately after the end of the relevant crediting  
23 period.
- 24 (5) Regulations made for the purposes of paragraph (4)(b) may specify  
25 different periods for different kinds of projects. This does not limit  
26 subsection 33(3A) of the *Acts Interpretation Act 1901*.
- 27 (6) To avoid doubt, the relevant crediting period may be a period that  
28 is a crediting period because of a previous determination under  
29 subsection 74(2).



1       **71 Form of application**

- 2               (1) An application must:
- 3                     (a) be in writing; and
- 4                     (b) be in a form approved, in writing, by the Administrator; and
- 5                     (c) be accompanied by such information as is specified in the
- 6                               regulations; and
- 7                     (d) be accompanied by such other documents (if any) as are
- 8                               specified in the regulations; and
- 9                     (e) be accompanied by the fee (if any) specified in the
- 10                               regulations.
- 11               (2) The approved form of application may provide for verification by
- 12                     statutory declaration of statements in applications.
- 13               (3) A fee specified under paragraph (1)(e) must not be such as to
- 14                     amount to taxation.

15       **72 Further information**

- 16               (1) The Administrator may, by written notice given to an applicant,
- 17                     require the applicant to give the Administrator, within the period
- 18                     specified in the notice, further information in connection with the
- 19                     application.
- 20               (2) If the applicant breaches the requirement, the Administrator may,
- 21                     by written notice given to the applicant:
- 22                     (a) refuse to consider the application; or
- 23                     (b) refuse to take any action, or any further action, in relation to
- 24                               the application.

25       **73 Withdrawal of application**

- 26               (1) An applicant may withdraw the application at any time before the
- 27                     Administrator makes a decision on the application.
- 28               (2) This Act does not prevent the applicant from making a fresh
- 29                     application.
- 30               (3) If:

**Part 5** Crediting periods

**Division 3** Subsequent crediting period

**Section 74**

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- 1 (a) the applicant withdraws the application; and  
2 (b) the applicant has paid a fee in relation to the application;  
3 the Administrator must, on behalf of the Commonwealth, refund  
4 the application fee.

5 **74 Determination of subsequent crediting period**

6 *Scope*

- 7 (1) This section applies if an application under section 70 has been  
8 made for the determination of a specified period as a subsequent  
9 crediting period for an eligible offsets project.

10 *Determination*

- 11 (2) After considering the application, the Administrator may, by  
12 writing, determine that the period is a subsequent *crediting period*  
13 for the project for the purposes of this Act.
- 14 (3) The Administrator must not make a determination under  
15 subsection (2) unless the Administrator is satisfied that:  
16 (a) the applicant is the project proponent for the project; and  
17 (b) the project is covered by a methodology determination; and  
18 (c) the project meets such requirements as are set out in the  
19 applicable methodology determination in accordance with  
20 paragraph 106(1)(b); and  
21 (d) the project passes the additionality test.

22 *Notification of determination*

- 23 (4) As soon as practicable after making a determination under  
24 subsection (2), the Administrator must give a copy of the  
25 determination to the applicant.

26 *Refusal*

- 27 (5) If the Administrator decides to refuse to determine that the period  
28 is a subsequent crediting period for the project, the Administrator  
29 must give written notice of the decision to the applicant.

1

*Determination is not a legislative instrument*

2

(6) A determination made under subsection (2) is not a legislative instrument.

3

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1 **Part 6—Reporting and notification requirements**

2 **Division 1—Introduction**

3 **75 Simplified outline**

4 The following is a simplified outline of this Part:

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- The project proponent for an eligible offsets project must give the Administrator an offsets report for a period that is expressed to be a reporting period for the project.
  - The first reporting period must begin when the declaration of the project under section 27 took effect.
  - Each subsequent reporting period must begin immediately after the end of the previous reporting period.
  - A reporting period must not be:
    - (a) shorter than 12 months; or
    - (b) longer than 5 years.
  - The Administrator must be notified of certain events relating to eligible offsets projects.

1 **Division 2—Reporting requirements**

2 **76 Offsets reports**

3 *Report for first reporting period*

- 4 (1) The project proponent for an eligible offsets project must, in  
5 accordance with this section, give the Administrator a written  
6 report about the project for a period that:
- 7 (a) is expressed to be a reporting period for the project; and
  - 8 (b) begins when the declaration of the project under section 27  
9 took effect; and
  - 10 (c) is not shorter than 12 months; and
  - 11 (d) is not longer than 5 years.

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

16 *Reports for subsequent reporting periods*

- 17 (2) The project proponent for an eligible offsets project must, in  
18 accordance with this section, give the Administrator a written  
19 report about the project for a period that:
- 20 (a) is expressed to be a reporting period for the project; and
  - 21 (b) begins immediately after the end of the previous reporting  
22 period for the project; and
  - 23 (c) is not shorter than 12 months; and
  - 24 (d) is not longer than 5 years.

25 Note 1: Under section 15, the Administrator may only issue a certificate of  
26 entitlement to Australian carbon credit units in relation to a reporting  
27 period for an eligible offsets project if the reporting period is included  
28 in a crediting period for the project.

29 Note 2: See also section 77.

30 *Offsets report*

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

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*Offsets report requirements*

- (4) An offsets report about a project for a reporting period must:
  - (a) be given in the manner and form prescribed by the regulations; and
  - (b) set out the information specified in the regulations; and
  - (c) be accompanied by a prescribed audit report prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
  - (d) be accompanied by such other documents (if any) as are specified in the regulations; and
  - (e) be given to the Administrator within 3 months after the end of the reporting period.
- (5) The regulations may provide that a project of a kind specified in the regulations is exempt from paragraph (4)(c).
- (6) Subsection (5) of this section does not, by implication, limit the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.
- (7) If, under the applicable methodology determination, the project proponent for the project is subject to a requirement to include specified information relating to the project in the offsets report, the offsets report must include that information.
- (8) If the following conditions are satisfied in relation to 2 or more eligible offsets projects:
  - (a) the relevant section 27 declarations were made as a result of applications covered by a particular subsection 26(2) determination;
  - (b) a particular person is the project proponent for the projects;offsets reports relating to those projects may be set out in the same document.
- (9) Information specified in regulations made for the purposes of paragraph (4)(b) may relate to a matter arising before, during or after the reporting period.

- 1 (10) A document specified in regulations made for the purposes of  
2 paragraph (4)(d) may relate to a matter arising before, during or  
3 after the reporting period.

4 *Ancillary contraventions*

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

14 *Civil penalty provisions*

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

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

18 **77 Declaration that offsets report requirement does not apply**

19 *Regulations*

- 20 (1) The regulations may make provision for and in relation to  
21 empowering the Administrator to declare that subsection 76(2)  
22 does not apply to a particular eligible offsets project.
- 23 (2) Regulations made for the purposes of subsection (1) must not  
24 empower the Administrator to make a declaration unless:  
25 (a) the project is a sequestration offsets project; and  
26 (b) the project proponent for the project applies to the  
27 Administrator for the declaration; and  
28 (c) the Administrator is satisfied that the project has reached its  
29 maximum carbon sequestration capacity.
- 30 (3) Regulations made for the purposes of subsection (1) may make  
31 provision for or in relation to any or all of the following matters:

**Part 6** Reporting and notification requirements

**Division 2** Reporting requirements

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- 1 (a) applications for variations under those regulations;  
2 (b) the approval by the Administrator of a form for such an  
3 application;  
4 (c) information that must accompany such an application;  
5 (d) documents that must accompany such an application;  
6 (e) verification by statutory declaration of statements in such an  
7 application;  
8 (f) the fee (if any) that must accompany such an application;  
9 (g) the withdrawal of such an application;  
10 (h) empowering the Administrator:  
11 (i) to require an applicant to give the Administrator further  
12 information in connection with such an application; and  
13 (ii) if the applicant breaches the requirement—to refuse to  
14 consider the application, or to refuse to take any action,  
15 or any further action, in relation to the application.
- 16 (4) Subsection (3) does not limit subsection (1).
- 17 (5) A fee mentioned in paragraph (3)(f) must not be such as to amount  
18 to taxation.
- 19 *When a declaration takes effect*
- 20 (6) A declaration under regulations made for the purposes of  
21 subsection (1) takes effect:  
22 (a) when it is made; or  
23 (b) if a later day is specified in the declaration—on that later day.  
24



1 **Division 3—Notification requirements**

2 **Subdivision A—Project proponents**

3 **78 Notification requirement—ceasing to be the project proponent**  
4 **for an eligible offsets project otherwise than because of**  
5 **death**

6 *Scope*

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

10 *Notification*

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

13 *Ancillary contraventions*

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

23 *Civil penalty provisions*

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

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

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1 **79 Notification requirement—death of the project proponent for an**  
2 **eligible offsets project**

3 *Scope*

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

6 *Notification*

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

9 *Ancillary contraventions*

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

19 *Civil penalty provisions*

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

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

23 **80 Notification requirement—methodology determinations**

24 *Scope*

- 25 (1) This section applies if:  
26 (a) there is an eligible offsets project; and  
27 (b) under the applicable methodology determination, the project  
28 proponent for the project is subject to a requirement to notify

1 the Administrator of one or more matters relating to the  
2 project.

3 *Notification*

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

5 *Ancillary contraventions*

6 (3) A person must not:

7 (a) aid, abet, counsel or procure a contravention of  
8 subsection (2); or

9 (b) induce, whether by threats or promises or otherwise, a  
10 contravention of subsection (2); or

11 (c) be in any way, directly or indirectly, knowingly concerned in,  
12 or party to, a contravention of subsection (2); or

13 (d) conspire with others to effect a contravention of  
14 subsection (2).

15 *Civil penalty provisions*

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

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

19 **81 Notification requirement—natural disturbances**

20 *Scope*

21 (1) This section applies to an eligible offsets project if the project is:

22 (a) a sequestration offsets project to remove carbon dioxide from  
23 the atmosphere; or

24 (b) a sequestration offsets project to remove carbon dioxide from  
25 the atmosphere and to avoid emissions of greenhouse gases.

26 *Notification*

27 (2) The project proponent for the project must:

28 (a) notify the Administrator, in writing, of:

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- 1 (i) a natural disturbance that causes a reversal of the  
2 removal; or  
3 (ii) a natural disturbance that is likely to cause a reversal of  
4 the removal; and  
5 (b) do so within 60 days after the project proponent becomes  
6 aware that the natural disturbance has happened.
- 7 (3) Subsection (2) does not apply to a reversal unless the reversal is,  
8 under the regulations, taken to be a significant reversal.

9 *Ancillary contraventions*

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

19 *Civil penalty provisions*

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

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

23 **82 Notification requirement—reversal of sequestration due to**  
24 **conduct of another person**

25 *Scope*

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

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*Notification*

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(2) The project proponent for the project must:

3

(a) notify the Administrator, in writing, of conduct engaged in by a person (other than the project proponent), where the conduct:

4

5

6

(i) is not within the reasonable control of the project proponent; and

7

8

(ii) causes a reversal of the removal; and

9

(b) do so within 60 days after the project proponent becomes aware that the conduct has been engaged in.

10

11

(3) The project proponent for the project must:

12

(a) notify the Administrator, in writing, of conduct engaged in by a person (other than the project proponent), where the conduct:

13

14

15

(i) is not within the reasonable control of the project proponent; and

16

17

(ii) is likely to cause a reversal of the removal; and

18

(b) do so within 60 days after the project proponent becomes aware that the conduct has been engaged in.

19

20

(4) Subsections (2) and (3) do not apply to a reversal unless the reversal is, under the regulations, taken to be a significant reversal.

21

22

*Ancillary contraventions*

23

(5) A person must not:

24

(a) aid, abet, counsel or procure a contravention of subsection (2) or (3); or

25

26

(b) induce, whether by threats or promises or otherwise, a contravention of subsection (2) or (3); or

27

28

(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2) or (3); or

29

30

(d) conspire with others to effect a contravention of subsection (2) or (3).

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1 *Civil penalty provisions*

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

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

5 **83 Notification requirement—project becomes inconsistent with a**  
6 **regional natural resource management plan**

7 *Scope*

8 (1) This section applies if:

- 9 (a) there is an eligible offsets project; and  
10 (b) the project area, or any of the project areas, for the project is  
11 covered by a regional natural resource management plan; and  
12 (c) as a result of a change to the project, the project becomes  
13 inconsistent with the plan.

14 *Notification*

15 (2) The project proponent for the project must, within 90 days after the  
16 change, notify the Administrator, in writing, of:

- 17 (a) the change; and  
18 (b) the inconsistency.

19 (3) A person must not:

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

28 *Civil penalty provisions*

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

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

1 **Subdivision B—Recognised offsets entities**

2 **84 Notification requirement—recognised offsets entities**

3 *Scope*

4 (1) This section applies to a person if:

5 (a) the person is a recognised offsets entity; and

6 (b) any of the following events happen:

7 (i) the person is convicted of an offence against a law of  
8 the Commonwealth, a State or a Territory, where the  
9 offence relates to dishonest conduct;

10 (ii) the person is convicted of an offence against a law of  
11 the Commonwealth, a State or a Territory, where the  
12 offence relates to the conduct of a business;

13 (iii) the person is convicted of an offence against  
14 section 136.1, 137.1 or 137.2 of the *Criminal Code*;

15 (iv) an order is made against the person under section 76 of  
16 the *Competition and Consumer Act 2010*;

17 (v) an order is made against the person under section 224 of  
18 Schedule 2 to the *Competition and Consumer Act 2010*,  
19 as that section applies as a law of the Commonwealth, a  
20 State or a Territory;

21 (vi) if the person is a body corporate—an executive officer  
22 of the body corporate is convicted of an offence against  
23 a law of the Commonwealth, a State or a Territory,  
24 where the offence relates to dishonest conduct;

25 (vii) if the person is a body corporate—an executive officer  
26 of the body corporate is convicted of an offence against  
27 a law of the Commonwealth, a State or a Territory,  
28 where the offence relates to the conduct of a business;

29 (viii) if the person is a body corporate—an executive officer  
30 of the body corporate is convicted of an offence against  
31 section 136.1, 137.1 or 137.2 of the *Criminal Code*;

32 (ix) if the person is a body corporate—an order is made  
33 against an executive officer of the body corporate under  
34 section 76 of the *Competition and Consumer Act 2010*;

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- 1 (x) if the person is a body corporate—an order is made  
2 against an executive officer of the body corporate under  
3 section 224 of Schedule 2 to the *Competition and*  
4 *Consumer Act 2010*, as that section applies as a law of  
5 the Commonwealth, a State or a Territory;  
6 (xi) the person becomes an insolvent under administration;  
7 (xii) if the person is a body corporate—the person becomes  
8 an externally-administered body corporate.

9 *Notification*

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

12 *Ancillary contraventions*

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

22 *Civil penalty provisions*

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

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

26 **Subdivision C—General**

27 **85 Regulations may impose notification requirements**

28 *Scope*

- 29 (1) This section applies if a person is:  
30 (a) the project proponent for an eligible offsets project; or



1 (b) a recognised offsets entity.

2 *Regulations*

3 (2) The regulations may make provision requiring the person to notify  
4 the Administrator of a matter.

5 (3) Regulations made for the purposes of subsection (2) may make  
6 different provision with respect to different project proponents or  
7 different recognised offsets entities. This does not limit subsection  
8 33(3A) of the *Acts Interpretation Act 1901*.

9 (4) A matter specified in regulations made for the purposes of  
10 subsection (2) must be relevant to the operation of this Act.

11 *Requirement*

12 (5) If a person is subject to a requirement under regulations made for  
13 the purposes of subsection (2), the person must comply with that  
14 requirement.

15 *Ancillary contraventions*

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

25 *Civil penalty provisions*

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

27 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty  
28 provisions.  
29

1 **Part 7—Requirements to relinquish Australian**  
2 **carbon credit units**

3 **Division 1—Introduction**

4 **86 Simplified outline**

5 The following is a simplified outline of this Part:

- 6 • Australian carbon credit units may be required to be  
7 relinquished if:
- 8 (a) the issue of the units is attributable to the giving of  
9 false or misleading information; or
- 10 (b) the units were issued in relation to a sequestration  
11 offsets project, and the declaration of the  
12 sequestration offsets project as an eligible offsets  
13 project has been varied or revoked; or
- 14 (c) the units were issued in relation to a sequestration  
15 offsets project, and there has been a complete or  
16 partial reversal of sequestration.

17 **87 Maximum potential relinquishment period**

18 (1) For the purposes of this Act, the *maximum potential*  
19 *relinquishment period* for an eligible offsets project is:

- 20 (a) 100 years; or  
21 (b) if, at the time when the declaration of the project as an  
22 eligible offsets project was made, a greater number of years  
23 was specified in the regulations—that greater number of  
24 years.

25 (2) However, if:

- 26 (a) the regulations specify a number of years that is less than 100  
27 years; and

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(b) those regulations are made after the time when the  
declaration of a project as an eligible offsets project was  
made;  
then, despite subsection (1), that lesser number of years is the  
***maximum potential relinquishment period*** for the eligible offsets  
project.

1 **Division 2—General relinquishment requirements**

2 **88 Requirement to relinquish—false or misleading information**

3 *Scope*

4 (1) This section applies if:

- 5 (a) a number of Australian carbon credit units have been issued  
6 to a person in relation to an eligible offsets project; and  
7 (b) information was given by the person to the Administrator in  
8 connection with the project; and  
9 (c) the information was:  
10 (i) contained in an application under this Act or the  
11 regulations; or  
12 (ii) given in connection with an application under this Act  
13 or the regulations; or  
14 (iii) contained in an offsets report; or  
15 (iv) contained in a notification under Part 6; and  
16 (d) the information was false or misleading in a material  
17 particular; and  
18 (e) the issue of any or all of the units was directly or indirectly  
19 attributable to the false or misleading information.

20 *Relinquishment*

21 (2) If the units mentioned in paragraph (1)(e) are Kyoto Australian  
22 carbon credit units, the Administrator may, by written notice given  
23 to the person, require the person to relinquish a specified number  
24 of Kyoto Australian carbon credit units.

25 Note 1: See also section 177 (transfer of certain units instead of  
26 relinquishment of Kyoto Australian carbon credit units).

27 Note 2: See also section 178 (transfer of certain units instead of  
28 relinquishment of non-Kyoto Australian carbon credit units).

29 (3) A number specified under subsection (2) must not exceed the  
30 number of Kyoto Australian carbon credit units the issue of which  
31 was directly or indirectly attributable to the false or misleading  
32 information.

- 1 (4) If the units mentioned in paragraph (1)(e) are non-Kyoto  
2 Australian carbon credit units, the Administrator may, by written  
3 notice given to the person, require the person to relinquish a  
4 specified number of non-Kyoto Australian carbon credit units.
- 5 (5) A number specified under subsection (4) must not exceed the  
6 number of non-Kyoto Australian carbon credit units the issue of  
7 which was directly or indirectly attributable to the false or  
8 misleading information.
- 9 (6) The person must comply with the requirement within 90 days after  
10 the notice was given.

11 Note: An administrative penalty is payable under section 179 for  
12 non-compliance with a relinquishment requirement.  
13

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1 **Division 3—Relinquishment requirements for**  
2 **sequestration offsets projects**

3 **89 Requirement to relinquish—revocation of declaration of eligible**  
4 **offsets project**

5 *Scope*

6 (1) This section applies if:

7 (a) an eligible offsets project is a sequestration offsets project;  
8 and

9 (b) a number of Australian carbon credit units have been issued  
10 in relation to the project; and

11 (c) the declaration of the project as an eligible offsets project is  
12 revoked under regulations made for the purposes of any of  
13 the following provisions:

14 (i) subsection 35(1);

15 (ii) subsection 36(1);

16 (iii) subsection 37(1);

17 (iv) subsection 38(1);

18 (v) subsection 139(1); and

19 (d) if the declaration has never been varied so as to add one or  
20 more project areas—the period that has passed since the first  
21 occasion on which an Australian carbon credit unit was  
22 issued in relation to the project in accordance with Part 2 is  
23 shorter than the maximum potential relinquishment period for  
24 the project; and

25 (e) if the declaration has been varied so as to add one or more  
26 project areas—the period that has passed since the last  
27 occasion on which the declaration was so varied is shorter  
28 than the maximum potential relinquishment period for the  
29 project.

30 *Relinquishment*

31 (2) The Administrator may, by written notice given to the project  
32 proponent for the project, require the project proponent to  
33 relinquish a specified number of:

- 1 (a) if the project is an eligible Kyoto project—Kyoto Australian  
2 carbon credit units; or  
3 (b) if the project is an eligible non-Kyoto project—non-Kyoto  
4 Australian carbon credit units.

5 Note 1: See also section 177 (transfer of certain units instead of  
6 relinquishment of Kyoto Australian carbon credit units).

7 Note 2: See also section 178 (transfer of certain units instead of  
8 relinquishment of non-Kyoto Australian carbon credit units).

- 9 (3) The specified number must not exceed the net total number of  
10 Australian carbon credit units issued in relation to the project in  
11 accordance with Part 2.
- 12 (4) The project proponent must comply with the requirement within 90  
13 days after the notice was given.
- 14 Note 1: An administrative penalty is payable under section 179 for  
15 non-compliance with a relinquishment requirement.
- 16 Note 2: See also section 95 (transition of offsets projects).

17 **90 Requirement to relinquish—reversal of sequestration other than**  
18 **due to natural disturbance or conduct etc.**

19 *Scope*

- 20 (1) This section applies if:
- 21 (a) an eligible offsets project is a sequestration offsets project to  
22 remove carbon dioxide from the atmosphere; and  
23 (b) a number of Australian carbon credit units have been issued  
24 in relation to the project; and  
25 (c) there has been a reversal of the removal; and  
26 (d) the reversal is, under the regulations, taken to be a significant  
27 reversal; and  
28 (e) the reversal is not attributable to:  
29 (i) natural disturbance; or  
30 (ii) reasonable actions taken to reduce the risk of bushfire;  
31 or  
32 (iii) conduct engaged in by a person (other than the project  
33 proponent for the project), where the conduct is not

**Part 7** Requirements to relinquish Australian carbon credit units

**Division 3** Relinquishment requirements for sequestration offsets projects

**Section 90**

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- 1                                        within the reasonable control of the project proponent;  
2                                        and  
3                                        (f) if the relevant section 27 declaration has never been varied so  
4                                        as to add one or more project areas—the period that has  
5                                        passed since the first occasion on which an Australian carbon  
6                                        credit unit was issued in relation to the project in accordance  
7                                        with Part 2 is shorter than the maximum potential  
8                                        relinquishment period for the project; and  
9                                        (g) if the relevant section 27 declaration has been varied so as to  
10                                        add one or more project areas—the period that has passed  
11                                        since the last occasion on which the declaration was so varied  
12                                        is shorter than the maximum potential relinquishment period  
13                                        for the project.

14                                        *Relinquishment*

- 15                                        (2) The Administrator may, by written notice given to the project  
16                                        proponent for the project, require the project proponent to  
17                                        relinquish a specified number of:  
18                                        (a) if the project is an eligible Kyoto project—Kyoto Australian  
19                                        carbon credit units; or  
20                                        (b) if the project is an eligible non-Kyoto project—non-Kyoto  
21                                        Australian carbon credit units.
- 22                                        Note 1:     See also section 177 (transfer of certain units instead of  
23                                                                               relinquishment of Kyoto Australian carbon credit units).
- 24                                        Note 2:     See also section 178 (transfer of certain units instead of  
25                                                                               relinquishment of non-Kyoto Australian carbon credit units).
- 26                                        (3) The specified number must not exceed the net total number of  
27                                        Australian carbon credit units issued in relation to the project in  
28                                        accordance with Part 2.
- 29                                        (4) The project proponent must comply with the requirement within 90  
30                                        days after the notice was given.
- 31                                        Note 1:     An administrative penalty is payable under section 179 for  
32                                                                               non-compliance with a relinquishment requirement.
- 33                                        Note 2:     See also section 95 (transition of offsets projects).



1 **91 Requirement to relinquish—reversal of sequestration due to**  
2 **natural disturbance or conduct and no mitigation**  
3 **happens**

4 *Scope*

- 5 (1) This section applies if:
- 6 (a) an eligible offsets project is a sequestration offsets project to  
7 remove carbon dioxide from the atmosphere; and
  - 8 (b) a number of Australian carbon credit units have been issued  
9 in relation to the project; and
  - 10 (c) there has been a reversal of the removal; and
  - 11 (d) the reversal is, under the regulations, taken to be a significant  
12 reversal; and
  - 13 (e) the reversal is attributable to:
    - 14 (i) natural disturbance; or
    - 15 (ii) conduct engaged in by a person (other than the project  
16 proponent for the project), where the conduct is not  
17 within the reasonable control of the project proponent;  
18 and
  - 19 (f) the Administrator is not satisfied that the project proponent  
20 has, within a reasonable period, taken reasonable steps to  
21 mitigate the effect of the natural disturbance or conduct, as  
22 the case may be, on the project; and
  - 23 (g) if the relevant section 27 declaration has never been varied so  
24 as to add one or more project areas—the period that has  
25 passed since the first occasion on which an Australian carbon  
26 credit unit was issued in relation to the project in accordance  
27 with Part 2 is shorter than the maximum potential  
28 relinquishment period for the project; and
  - 29 (h) if the relevant section 27 declaration has been varied so as to  
30 add one or more project areas—the period that has passed  
31 since the last occasion on which the declaration was so varied  
32 is shorter than the maximum potential relinquishment period  
33 for the project.

**Part 7** Requirements to relinquish Australian carbon credit units

**Division 3** Relinquishment requirements for sequestration offsets projects

**Section 91**

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1

*Relinquishment*

2

(2) The Administrator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of:

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(a) if the project is an eligible Kyoto project—Kyoto Australian carbon credit units; or

6

7

(b) if the project is an eligible non-Kyoto project—non-Kyoto Australian carbon credit units.

8

9

Note 1: See also section 177 (transfer of certain units instead of relinquishment of Kyoto Australian carbon credit units).

10

11

Note 2: See also section 178 (transfer of certain units instead of relinquishment of non-Kyoto Australian carbon credit units).

12

13

(3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.

14

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16

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

17

18

Note 1: An administrative penalty is payable under section 179 for non-compliance with a relinquishment requirement.

19

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Note 2: See also section 95 (transition of offsets projects).

21

1       **Division 4—Transition of offsets projects from prescribed**  
2       **non-CFI offsets schemes**

3       **92 Request for determination**

- 4               (1) If a person applies under section 22 for a declaration of an offsets  
5               project as an eligible offsets project, the application may be  
6               accompanied by a request for a determination under section 95 in  
7               relation to the project.
- 8               (2) A person is not entitled to make a request after the end of the  
9               2-year period beginning at the commencement of this section.

10       **93 Form of request**

- 11               (1) A request must:  
12               (a) be in writing; and  
13               (b) be in a form approved, in writing, by the Administrator; and  
14               (c) be accompanied by such information as is specified in the  
15               regulations; and  
16               (d) be accompanied by such documents (if any) as are specified  
17               in the regulations.
- 18               (2) The approved form of request may provide for verification by  
19               statutory declaration of statements in requests.

20       **94 Further information**

- 21               (1) The Administrator may, by written notice given to a person who  
22               has made a request under section 92, require the person to give the  
23               Administrator, within the period specified in the notice, further  
24               information in connection with the request.
- 25               (2) If the person breaches the requirement, the Administrator may, by  
26               written notice given to the person:  
27               (a) refuse to consider:  
28               (i) the request; and  
29               (ii) the application under section 22; or  
30               (b) refuse to take any action, or any further action, in relation to:

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- 1 (i) the request; and  
2 (ii) the application under section 22.

3 **95 Determination**

4 *Scope*

- 5 (1) This section applies if:  
6 (a) a request under section 92 has been made for a determination  
7 under this section in relation to an offsets project; and  
8 (b) under section 27, the Administrator has declared the offsets  
9 project to be an eligible offsets project.

10 *Determination*

- 11 (2) As soon as practicable after making the declaration, the  
12 Administrator must consider the request and may, by written notice  
13 given to the person who made the request, determine that this Act  
14 has effect, in relation to the project, as if:  
15 (a) paragraphs 89(1)(b), 90(1)(b) and 91(1)(b) had not been  
16 enacted; and  
17 (b) the net total number of Australian carbon credit units  
18 mentioned in subsections 89(3), 90(3) and 91(3) were  
19 increased by the number specified in the determination.
- 20 (3) The Administrator must not make a determination under  
21 subsection (2) unless the Administrator is satisfied that the project  
22 area was, or the project areas were, wholly or partly covered by a  
23 prescribed non-CFI offsets scheme.
- 24 (4) In making a determination under subsection (2), the Administrator  
25 must comply with the regulations.

26 *Refusal*

- 27 (5) If the Administrator refuses to make a determination under  
28 subsection (2), the Administrator must give notice of the refusal to  
29 the person who made the request for the determination.

1

*Determination is not legislative instrument*

2

(6) A determination made under subsection (2) is not a legislative instrument.

3

4

**Part 8** Carbon maintenance obligation

**Division 1** Introduction

Section 96

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1 **Part 8—Carbon maintenance obligation**

2 **Division 1—Introduction**

3 **96 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
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| <ul style="list-style-type: none"><li>• A carbon maintenance obligation may be imposed in relation to an area or areas of land if a relinquishment requirement has not been complied with.</li></ul> |
|--|

1 **Division 2—Carbon maintenance obligation**

2 **97 Carbon maintenance obligation**

3 *Scope*

4 (1) This section applies to one or more areas of land if:

5 (a) the following conditions are satisfied:

6 (i) a sequestration offsets project is or was an eligible  
7 offsets project;

8 (ii) a notice was given under section 88, 89, 90 or 91 in  
9 relation to the project;

10 (iii) the area was, or the areas were, identified in the relevant  
11 section 27 declaration as the project area or project areas  
12 for the eligible offsets project;

13 (iv) the notice required a person to relinquish a particular  
14 number of Australian carbon credit units;

15 (v) the person did not comply with the requirement within  
16 90 days after the notice was given; or

17 (b) the following conditions are satisfied:

18 (i) a sequestration offsets project is or was an eligible  
19 offsets project;

20 (ii) a notice was given under section 88, 89, 90 or 91 in  
21 relation to the project;

22 (iii) the area was, or the areas were, identified in the relevant  
23 section 27 declaration as the project area or project areas  
24 for the eligible offsets project;

25 (iv) the notice required a person to relinquish a particular  
26 number of Australian carbon credit units;

27 (v) the Administrator is satisfied that it is likely that the  
28 person will not comply with the requirement within 90  
29 days after the notice was given; or

30 (c) the Administrator is satisfied that:

31 (i) a sequestration offsets project is or was an eligible  
32 offsets project; and

33 (ii) it is likely that a notice will be given under section 88,  
34 89, 90 or 91 in relation to the project; and

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- 1 (iii) the area is, or the areas are, identified in the relevant  
2 section 27 declaration as the project area or project areas  
3 for the eligible offsets project; and  
4 (iv) the notice is likely to require a person to relinquish a  
5 particular number of Australian carbon credit units; and  
6 (v) it is likely that the person will not comply with the  
7 requirement within 90 days after the notice is given.

8 *Declaration*

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

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

- 16 (3) If the area or areas of land are subject to a carbon maintenance  
17 obligation, the carbon maintenance obligation ***relates*** to the project  
18 mentioned in whichever of subparagraph (1)(a)(i), (1)(b)(i) or  
19 (1)(c)(i) applies.
- 20 (4) An activity may be specified under paragraph (2)(b) by reference  
21 to:  
22 (a) the area or areas of land on which the activity may be carried  
23 out; or  
24 (b) the manner in which the activity may be carried out; or  
25 (c) the time or times at which the activity may be carried out; or  
26 (d) the period or periods during which the activity may be  
27 carried out; or  
28 (e) the person or persons who may carry out the activity.
- 29 (5) Subsection (4) does not limit the ways in which an activity may be  
30 specified under paragraph (2)(b).
- 31 (6) If the Administrator makes a declaration under subsection (2), the  
32 Administrator must take all reasonable steps to ensure that a copy  
33 of the declaration is given to:



- 1 (a) the project proponent for the project; and  
2 (b) each person who holds an eligible interest in the area, or any  
3 of the areas, of land; and  
4 (c) a person specified in the regulations; and  
5 (d) the relevant land registration official.
- 6 (7) A failure to comply with subsection (6) does not affect the validity  
7 of a declaration under subsection (2).

8 *Benchmark sequestration level*

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

15 *Obligations*

- 16 (9) If the area or areas of land are subject to a carbon maintenance  
17 obligation, a person must not engage in conduct that:  
18 (a) results, or is likely to result, in a reduction below the  
19 benchmark sequestration level of the sequestration of carbon  
20 in the relevant carbon pool on the area or areas; and  
21 (b) is not a permitted carbon activity.
- 22 (10) If:  
23 (a) the area or areas of land are subject to a carbon maintenance  
24 obligation; and  
25 (b) there has been a reduction below the benchmark  
26 sequestration level of the sequestration of carbon in the  
27 relevant carbon pool on the area or areas;  
28 the owner or occupier of the land must take all reasonable steps to  
29 ensure that the number of tonnes of carbon sequestered in the  
30 relevant carbon pool on the area or areas is not less than the  
31 benchmark storage level.

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*Ancillary contraventions*

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

*Civil penalty provisions*

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

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

*Duration of declaration*

- (13) A declaration under subsection (2) comes into force when a copy of the declaration is given to the project proponent for the project under subsection (6).
- (14) Unless sooner revoked, a declaration under subsection (2) ceases to be in force at whichever of the following times happens first:
- (a) when the penalty payable under section 179 in respect of the non-compliance with the requirement referred to in subparagraph (1)(a)(v) or (b)(v) (including any late payment penalty payable under section 180 in relation to the section 179 penalty) is paid in full;
  - (b) if:
    - (i) the notice referred to in subparagraph (1)(c)(ii) is given; and
    - (ii) the notice required a person to relinquish a particular number of Australian carbon credit units; and
    - (iii) the person did not comply with the requirement within 90 days after the notice was given;

- 1 when the penalty payable under section 179 in respect of the  
2 non-compliance with the requirement (including any late  
3 payment penalty payable under section 180 in relation to the  
4 section 179 penalty) is paid in full;
- 5 (c) if the relevant section 27 declaration has never been varied so  
6 as to add one or more project areas—the end of the period  
7 that:
- 8 (i) begins on the first occasion on which an Australian  
9 carbon credit unit was issued in relation to the project in  
10 accordance with Part 2; and
- 11 (ii) is of the same duration as the maximum potential  
12 relinquishment period for the project;
- 13 (d) if the relevant section 27 declaration has been varied so as to  
14 add one or more project areas—the end of the period that:
- 15 (i) begins on the last occasion on which the declaration was  
16 so varied; and
- 17 (ii) is of the same duration as the maximum potential  
18 relinquishment period for the project.

19 *Declaration is not a legislative instrument*

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

## 22 **98 Variation or revocation of declaration of carbon maintenance** 23 **obligation**

### 24 *Scope*

- 25 (1) This section applies if a declaration is in force under subsection  
26 97(2) in relation to an area or areas of land.

### 27 *Variation or revocation*

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

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*Application*

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

*Notification of variation or revocation*

- (6) If the Administrator varies or revokes the declaration, the Administrator must take all reasonable steps to ensure that a copy of the variation or revocation is given to:
  - (a) the project proponent for the project; and
  - (b) each person who holds an eligible interest in the area, or any of the areas, of land; and
  - (c) a person specified in the regulations; and
  - (d) the relevant land registration official.
- (7) A failure to comply with subsection (6) does not affect the validity of a variation or revocation.

*Refusal*

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

*Variation or revocation is not a legislative instrument*

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

1 **99 Revocation of declaration of carbon maintenance obligation—**  
2 **voluntary relinquishment of Australian carbon credit**  
3 **units**

4 *Scope*

- 5 (1) This section applies if:
- 6 (a) an area or areas of land are subject to a carbon maintenance  
7 obligation; and
  - 8 (b) in the case of a single area—the area is not a project area for  
9 an eligible offsets project; and
  - 10 (c) in the case of 2 or more areas—none of the areas is a project  
11 area for an eligible offsets project; and
  - 12 (d) a person applies to the Administrator for the revocation of the  
13 relevant subsection 97(2) declaration; and
  - 14 (e) if the project is an eligible Kyoto project:
    - 15 (i) before the application was made, the applicant or  
16 another person voluntarily relinquished a number of  
17 Kyoto Australian carbon credit units in order to satisfy a  
18 condition for revocation of the declaration; and
    - 19 (ii) the number of relinquished units equals the net total  
20 number of Australian carbon credit units issued in  
21 relation to the project in accordance with Part 2; and
  - 22 (f) if the project is an eligible non-Kyoto project:
    - 23 (i) before the application was made, the applicant or  
24 another person voluntarily relinquished a number of  
25 non-Kyoto Australian carbon credit units in order to  
26 satisfy a condition for revocation of the declaration; and
    - 27 (ii) the number of relinquished units equals the net total  
28 number of Australian carbon credit units issued in  
29 relation to the project in accordance with Part 2.

30 Note 1: See also section 177 (transfer of certain units instead of  
31 relinquishment of Kyoto Australian carbon credit units).

32 Note 2: See also section 178 (transfer of certain units instead of  
33 relinquishment of non-Kyoto Australian carbon credit units).

34 *Revocation*

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

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1                                    *Application*

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

5                                    *Notification of revocation*

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

16                                    *Refusal*

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

20                                    *Revocation is not a legislative instrument*

- 21                    (7) A revocation of the declaration is not a legislative instrument.  
22

1 **Division 3—Injunctions**

2 **100 Injunctions**

3 *Performance injunctions*

4 (1) If:

5 (a) a person has refused or failed, or is refusing or failing, or is  
6 proposing to refuse or fail, to do an act or thing; and

7 (b) the refusal or failure was, is or would be a contravention of  
8 subsection 97(9) or (10);

9 the Federal Court may, on the application of the Administrator,  
10 grant an injunction requiring the person to do that act or thing.

11 *Restraining injunctions*

12 (2) If a person has engaged, is engaging or is proposing to engage, in  
13 any conduct in contravention of subsection 97(9) or (10), the  
14 Federal Court may, on the application of the Administrator, grant  
15 an injunction:

16 (a) restraining the person from engaging in the conduct; and

17 (b) if, in the Court's opinion, it is desirable to do so—requiring  
18 the person to do something.

19 **101 Interim injunctions**

20 *Grant of interim injunction*

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

25 *No undertakings as to damages*

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

1       **102 Discharge etc. of injunctions**

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

4       **103 Certain limits on granting injunctions not to apply**

5                       *Performance injunctions*

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

16                      *Restraining injunctions*

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

28       **104 Other powers of the Federal Court unaffected**

29                      The powers conferred on the Federal Court under this Division are  
30                      in addition to, and not instead of, any other powers of the Court,  
31                      whether conferred by this Act or otherwise.  
32



1 **Part 9—Methodology determinations**

2 **Division 1—Introduction**

3 **105 Simplified outline**

4 The following is a simplified outline of this Part:

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- 18
- The Minister may make or vary a methodology determination that applies to a specified kind of offsets project.
  - The Minister must not make or vary a methodology determination unless:
    - (a) a proposal for the determination or variation has been endorsed by the Domestic Offsets Integrity Committee; and
    - (b) the determination, or varied determination, complies with the offsets integrity standards and certain other requirements.
  - A person may apply to the Domestic Offsets Integrity Committee for the endorsement of a proposal to make or vary a methodology determination.

1 **Division 2—Methodology determinations**

2 **Subdivision A—Making of methodology determinations**

3 **106 Methodology determinations**

4 (1) The Minister may, by legislative instrument, make a determination  
5 that:

- 6 (a) is expressed to apply to a specified kind of offsets project;  
7 and  
8 (b) sets out requirements that must be met for such a project to  
9 be an eligible offsets project; and  
10 (c) provides that, if such a project is an eligible offsets project  
11 other than a native forest protection project, the carbon  
12 dioxide equivalent net abatement amount for the project in  
13 relation to a reporting period for the project is taken, for the  
14 purposes of this Act, to be equal to the amount ascertained  
15 using a method specified in the determination; and  
16 (d) provides that, if such a project is a native forest protection  
17 project, the carbon dioxide equivalent net sequestration  
18 amount for a crediting period for the project is taken, for the  
19 purposes of this Act, to be equal to the amount ascertained  
20 using a method specified in the determination.

21 Note: For declarations of eligible offsets projects, see section 27.

22 (2) A determination under subsection (1) is to be known as a  
23 ***methodology determination***.

- 24 (3) A methodology determination that applies to a particular kind of  
25 offsets project may provide that, if such a project is an eligible  
26 offsets project, the project proponent for the project is subject to  
27 any or all of the following requirements:  
28 (a) specified requirements to include specified information  
29 relating to the project in each offsets report about the project;  
30 (b) specified requirements to notify one or more matters relating  
31 to the project to the Administrator;  
32 (c) specified record-keeping requirements relating to the project;  
33 (d) specified requirements to monitor the project.

- 1 (4) The Minister must not make a methodology determination unless:  
2 (a) the determination gives effect to a particular proposal for a  
3 methodology determination; and  
4 (b) the Domestic Offsets Integrity Committee has:  
5 (i) endorsed the proposal under section 112; and  
6 (ii) advised the Minister of the endorsement under  
7 section 113; and  
8 (c) the determination complies with the offsets integrity  
9 standards; and  
10 (d) the determination does not specify a kind of offsets project  
11 by reference to a State or a part of a State; and  
12 (e) the determination complies with such requirements (if any)  
13 as are specified in the regulations; and  
14 (f) the method specified in the determination in accordance with  
15 paragraph (1)(c) or (d) of this section includes a calculation  
16 of a baseline for the project; and  
17 (g) in a case where:  
18 (i) a method determined under subsection 10(3) of the  
19 *National Greenhouse and Energy Reporting Act 2007* is  
20 a method by which the amounts of the emissions of  
21 greenhouse gases from a particular source are to be  
22 measured for the purposes of that Act; and  
23 (ii) the method specified in the methodology determination  
24 in accordance with paragraph (1)(c) or (d) of this section  
25 involves the measurement of emissions of greenhouse  
26 gases from that source;  
27 the methodology determination provides that the emissions  
28 are to be measured, under the method specified in the  
29 methodology determination in accordance with  
30 paragraph (1)(c) or (d) of this section, in the same way as  
31 they are measured under the method determined under  
32 subsection 10(3) of the *National Greenhouse and Energy*  
33 *Reporting Act 2007*.

34 Note 1: For *baseline*, see section 107.

35 Note 2: For transitional matters, see sections 131 and 132.

- 36 (5) If:

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- 1 (a) an applicant applies under section 108 to the Domestic  
2 Offsets Integrity Committee for the endorsement of a  
3 proposal for a methodology determination; and  
4 (b) the Domestic Offsets Integrity Committee:  
5 (i) endorses the proposal under section 112; and  
6 (ii) advises the Minister of the endorsement under  
7 section 113; and  
8 (c) the Minister decides not to make a methodology  
9 determination to give effect to the proposal;  
10 the Minister must, as soon as practicable after making the decision,  
11 give the applicant a notice that sets out:  
12 (d) the decision; and  
13 (e) the reasons for the decision.
- 14 (6) Subsection (4) does not, by implication, prevent the Minister from:  
15 (a) asking the Domestic Offsets Integrity Committee to give the  
16 Minister additional advice about a matter arising under this  
17 section; or  
18 (b) asking another body or person to give the Minister advice  
19 about a matter arising under this section.
- 20 (7) Paragraph (1)(a) of this section does not, by implication, affect the  
21 application of subsection 13(3) of the *Legislative Instruments Act*  
22 *2003* to another instrument under this Act.
- 23 (8) A methodology determination may make provision in relation to a  
24 matter by applying, adopting or incorporating, with or without  
25 modification, a matter contained in an instrument or writing:  
26 (a) as in force or existing at a particular time; or  
27 (b) as in force or existing from time to time.
- 28 (9) Subsection (8) has effect despite anything in subsection 14(2) of  
29 the *Legislative Instruments Act 2003*.
- 30 (10) If a methodology determination makes provision in relation to a  
31 matter by applying, adopting or incorporating, with or without  
32 modification, a matter contained in an instrument or writing, the  
33 Domestic Offsets Integrity Committee must ensure that the text of  
34 the matter applied, adopted or incorporated is published on its  
35 website.

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- 1 (11) Subsection (10) does not apply if the publication would infringe  
2 copyright.
- 3 (12) If:
- 4 (a) the Domestic Offsets Integrity Committee:
- 5 (i) endorses a particular proposal for a methodology  
6 determination under section 112; and
- 7 (ii) advises the Minister of the endorsement under  
8 section 113; and
- 9 (b) the Minister decides:
- 10 (i) to make a methodology determination to give effect to  
11 the proposal; or
- 12 (ii) not to make a methodology determination to give effect  
13 to the proposal;
- 14 the Minister must, as soon as practicable after making the decision,  
15 cause a copy of the Domestic Offset Integrity Committee's advice  
16 under section 113 to be published on the Department's website.

17 **107 Baseline**

18 For the purposes of the application of this Act to a methodology  
19 determination, a *baseline* for an offsets project is to be calculated  
20 on the assumption that the project were not carried out.

21 **108 Application for endorsement of proposal for methodology**  
22 **determination**

- 23 (1) A person may apply to the Domestic Offsets Integrity Committee  
24 for endorsement of a specified proposal for a methodology  
25 determination.
- 26 (2) To avoid doubt, the specified proposal does not have to be in the  
27 form of a draft methodology determination.

28 **109 Form of application**

- 29 (1) An application under section 108 must:
- 30 (a) be in writing; and
- 31 (b) set out the proposal; and

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- 1 (c) be in a form approved, in writing, by the Minister; and  
2 (d) be accompanied by such information as is specified in the  
3 regulations; and  
4 (e) be accompanied by such other documents (if any) as are  
5 specified in the regulations; and  
6 (f) be accompanied by the fee (if any) specified in the  
7 regulations.
- 8 (2) The approved form of application may provide for verification by  
9 statutory declaration of statements in applications.
- 10 (3) A fee specified under paragraph (1)(f) must not be such as to  
11 amount to taxation.

**110 Further information**

- 13 (1) The Domestic Offsets Integrity Committee may, by written notice  
14 given to an applicant, require the applicant to give the Committee,  
15 within the period specified in the notice, further information in  
16 connection with the application.
- 17 (2) If the applicant breaches the requirement, the Domestic Offsets  
18 Integrity Committee may, by written notice given to the applicant:  
19 (a) refuse to consider the application; or  
20 (b) refuse to take any action, or any further action, in relation to  
21 the application.

**111 Withdrawal of application**

- 23 (1) An applicant may withdraw the application at any time before the  
24 Domestic Offsets Integrity Committee makes a decision on the  
25 application.
- 26 (2) This Act does not prevent the applicant from making a fresh  
27 application.
- 28 (3) If:  
29 (a) the applicant withdraws the application; and  
30 (b) the applicant has paid a fee in relation to the application;

1 the Domestic Offsets Integrity Committee must, on behalf of the  
2 Commonwealth, refund the application fee.

3 **112 Endorsement of proposal for methodology determination**

4 *Scope*

5 (1) This section applies if an application under section 108 has been  
6 made for the endorsement of a proposal for a methodology  
7 determination.

8 *Endorsement*

9 (2) After considering the application, the Domestic Offsets Integrity  
10 Committee must, in writing, either:

- 11 (a) endorse the proposal; or  
12 (b) refuse to endorse the proposal.

13 (3) The Domestic Offsets Integrity Committee must not endorse the  
14 proposal unless the Committee is satisfied that, if the Minister were  
15 to make a methodology determination to give effect to the  
16 proposal:

- 17 (a) the determination would comply with the offsets integrity  
18 standards; and  
19 (b) the determination would not specify a kind of offsets project  
20 by reference to a State or a part of a State; and  
21 (c) the determination would comply with such requirements (if  
22 any) as are specified in regulations made for the purposes of  
23 paragraph 106(4)(e); and  
24 (d) the method specified in the determination in accordance with  
25 paragraph 106(1)(c) or (d) would include a calculation of a  
26 baseline for the project;  
27 (g) in a case where:  
28 (i) a method determined under subsection 10(3) of the  
29 *National Greenhouse and Energy Reporting Act 2007* is  
30 a method by which the amounts of the emissions of  
31 greenhouse gases from a particular source are to be  
32 measured for the purposes of that Act; and

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- 1 (ii) the method specified in the methodology determination  
2 in accordance with paragraph 106(1)(c) or (d) would  
3 involve the measurement of emissions of greenhouse  
4 gases from that source;  
5 the methodology determination would provide that the  
6 emissions are to be measured, under the method specified in  
7 the methodology determination in accordance with paragraph  
8 106(1)(c) or (d), in the same way as they are measured under  
9 the method determined under subsection 10(3) of the  
10 *National Greenhouse and Energy Reporting Act 2007*.

11 Note: For *baseline*, see section 107.

12 (4) If:

- 13 (a) a Domestic Offsets Integrity Committee member:  
14 (i) is an SES employee in the Department; or  
15 (ii) holds or performs the duties of an Executive Level 2  
16 position, or an equivalent position, in the Department;  
17 and  
18 (b) the member advises the Committee that, if the Minister were  
19 to make a methodology determination to give effect to the  
20 proposal, the determination would not comply with the  
21 offsets integrity standard set out in paragraph 133(1)(c);  
22 then, for the purposes of paragraph (3)(a) of this section, the  
23 Domestic Offsets Integrity Committee is to assume that the  
24 determination would not comply with that offsets integrity  
25 standard.

26 Note: Paragraph 133(1)(c) deals with consistency with the National  
27 Inventory Report.

28 *Consultation and publication*

- 29 (5) The Domestic Offsets Integrity Committee must not endorse the  
30 proposal unless the Committee has first:  
31 (a) published on the Department's website:  
32 (i) the proposal; and  
33 (ii) a notice inviting the public to make a submission to the  
34 Committee on the proposal by a specified time limit;  
35 and



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- 1 (b) considered any submissions that were received within that  
2 time limit.
- 3 (6) The time limit must not be shorter than 40 days.
- 4 (7) If the Domestic Offsets Integrity Committee publishes the proposal  
5 on the Department's website under subsection (5), the Committee  
6 may also publish on the Department's website information given  
7 by the applicant to the Committee in accordance with section 109  
8 or 110.
- 9 (8) However, the Domestic Offsets Integrity Committee must not  
10 publish particular information under subsection (7) if the applicant  
11 has requested the Committee not to publish the information.
- 12 (9) A request under subsection (8) must:  
13 (a) be in writing; and  
14 (b) be in a form approved, in writing, by the Committee.
- 15 (10) The Domestic Offsets Integrity Committee must refuse to endorse  
16 the proposal if:  
17 (a) the applicant has made a request under subsection (8) for the  
18 Committee not to publish particular information; and  
19 (b) the Committee is satisfied that failing to publish that  
20 information could reasonably be expected to substantially  
21 prejudice the ability of the public to make well-informed  
22 submissions on the proposal under subsection (5).
- 23 (11) The Domestic Offsets Integrity Committee must publish on the  
24 Department's website any submissions under subsection (5)  
25 received within the time limit referred to in subparagraph (5)(a)(ii).
- 26 (12) However, the Domestic Offsets Integrity Committee must not  
27 publish a particular submission made by a person if the person has  
28 requested the Committee not to publish the submission on the  
29 ground that publication of the submission could reasonably be  
30 expected to substantially prejudice the commercial interests of the  
31 person or another person.
- 32 (13) A request under subsection (12) must:  
33 (a) be in writing; and
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1 (b) be in a form approved, in writing, by the Committee.

2 *Notification*

3 (14) As soon as practicable after making a decision under  
4 subsection (2), the Domestic Offsets Integrity Committee must  
5 give the applicant a notice that sets out:

6 (a) the decision; and

7 (b) if the decision is to refuse to endorse the proposal—the  
8 reasons for the decision.

9 *Instrument is not a legislative instrument*

10 (15) An instrument under subsection (2) is not a legislative instrument.

11 **113 Advice about endorsement of proposal**

12 *Scope*

13 (1) This section applies if the Domestic Offsets Integrity Committee  
14 endorses a proposal for a methodology determination under  
15 section 112.

16 *Advice*

17 (2) As soon as practicable after endorsing the proposal, the Committee  
18 must, by written notice given to the Minister, advise the Minister  
19 of the endorsement.

20 **Subdivision B—Variation of methodology determinations**

21 **114 Variation of methodology determinations**

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

24 (2) The Minister must not vary a methodology determination unless:

25 (a) the variation gives effect to a particular proposal for the  
26 variation of a methodology determination; and

27 (b) the Domestic Offsets Integrity Committee has:

28 (i) endorsed the proposal under section 120; and

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- 1 (ii) advised the Minister of the endorsement under  
2 section 121; and
- 3 (c) the varied determination complies with the offsets integrity  
4 standards; and
- 5 (d) the varied determination does not specify a kind of offsets  
6 project by reference to a State or a part of a State; and
- 7 (e) the varied determination complies with such requirements (if  
8 any) as are specified in regulations made for the purposes of  
9 paragraph 106(4)(e); and
- 10 (f) the method specified in the varied determination in  
11 accordance with paragraph 106(1)(c) or (d) includes a  
12 calculation of a baseline for the project; and
- 13 (g) in a case where:
- 14 (i) a method determined under subsection 10(3) of the  
15 *National Greenhouse and Energy Reporting Act 2007* is  
16 a method by which the amounts of the emissions of  
17 greenhouse gases from a particular source are to be  
18 measured for the purposes of that Act; and
- 19 (ii) the method specified in the varied methodology  
20 determination in accordance with paragraph 106(1)(c)  
21 or (d) involves the measurement of emissions of  
22 greenhouse gases from that source;
- 23 the varied methodology determination provides that the  
24 emissions are to be measured, under the method specified in  
25 the varied methodology determination in accordance with  
26 paragraph 106(1)(c) or (d), in the same way as they are  
27 measured under the method determined under subsection  
28 10(3) of the *National Greenhouse and Energy Reporting Act*  
29 *2007*.

30 Note: For **baseline**, see section 107.

- 31 (3) If:
- 32 (a) an applicant applies under section 116 to the Domestic  
33 Offsets Integrity Committee for the endorsement of a  
34 proposal for the variation of a methodology determination;  
35 and
- 36 (b) the Domestic Offsets Integrity Committee:
- 37 (i) endorses the proposal under section 120; and

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- 1 (ii) advises the Minister of the endorsement under  
2 section 121; and
- 3 (c) the Minister decides not to vary the methodology  
4 determination so as to give effect to the proposal;  
5 the Minister must, as soon as practicable after making the decision,  
6 give the applicant a notice that sets out:
- 7 (d) the decision; and  
8 (e) the reasons for the decision.
- 9 (4) Subsection (2) does not, by implication, prevent the Minister from:
- 10 (a) asking the Domestic Offsets Integrity Committee to give the  
11 Minister additional advice about a matter arising under this  
12 section; or
- 13 (b) asking another body or person to give the Minister advice  
14 about a matter arising under this section.
- 15 (5) Subsection (1) of this section does not, by implication, limit the  
16 application of subsection 33(3) of the *Acts Interpretation Act 1901*  
17 to other instruments under this Act.
- 18 (6) If:
- 19 (a) the Domestic Offsets Integrity Committee:
- 20 (i) endorses a particular proposal for the variation of a  
21 methodology determination under section 120; and  
22 (ii) advises the Minister of the endorsement under  
23 section 121; and
- 24 (b) the Minister decides:
- 25 (i) to vary the methodology determination so as to give  
26 effect to the proposal; or  
27 (ii) not to vary the methodology determination so as to give  
28 effect to the proposal;
- 29 the Minister must, as soon as practicable after making the decision,  
30 cause a copy of the Domestic Offset Integrity Committee's advice  
31 under section 120 to be published on the Department's website.

**115 When variation takes effect**

32 A variation of a methodology determination takes effect:

- 1 (a) on the day on which the instrument varying the methodology  
2 determination is made; or  
3 (b) if a later day is specified in the instrument—on that later day.

4 **116 Application for endorsement of proposal for the variation of a**  
5 **methodology determination**

- 6 (1) A person may apply to the Domestic Offsets Integrity Committee  
7 for endorsement of a specified proposal for the variation of a  
8 methodology determination.  
9 (2) To avoid doubt, the specified proposal does not have to be in the  
10 form of a draft variation.

11 **117 Form of application**

- 12 (1) An application under section 116 must:  
13 (a) be in writing; and  
14 (b) set out the proposal; and  
15 (c) be in a form approved, in writing, by the Domestic Offsets  
16 Integrity Committee; and  
17 (d) be accompanied by such information as is specified in the  
18 regulations; and  
19 (e) be accompanied by such other documents (if any) as are  
20 specified in the regulations; and  
21 (f) be accompanied by the fee (if any) specified in the  
22 regulations.  
23 (2) The approved form of application may provide for verification by  
24 statutory declaration of statements in applications.  
25 (3) A fee specified under paragraph (1)(f) must not be such as to  
26 amount to taxation.

27 **118 Further information**

- 28 (1) The Domestic Offsets Integrity Committee may, by written notice  
29 given to an applicant, require the applicant to give the Committee,  
30 within the period specified in the notice, further information in  
31 connection with the application.

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- 1 (2) If the applicant breaches the requirement, the Domestic Offsets  
2 Integrity Committee may, by written notice given to the applicant:  
3 (a) refuse to consider the application; or  
4 (b) refuse to take any action, or any further action, in relation to  
5 the application.

6 **119 Withdrawal of application**

- 7 (1) An applicant may withdraw the application at any time before the  
8 Domestic Offsets Integrity Committee makes a decision on the  
9 application.
- 10 (2) This Act does not prevent the applicant from making a fresh  
11 application.
- 12 (3) If:  
13 (a) the applicant withdraws the application; and  
14 (b) the applicant has paid a fee in relation to the application;  
15 the Domestic Offsets Integrity Committee must, on behalf of the  
16 Commonwealth, refund the application fee.

17 **120 Endorsement of proposal for variation of methodology**  
18 **determination**

19 *Scope*

- 20 (1) This section applies if an application under section 116 has been  
21 made for the endorsement of a proposal for the variation of a  
22 methodology determination.

23 *Endorsement*

- 24 (2) After considering the application, the Domestic Offsets Integrity  
25 Committee must, in writing, either:  
26 (a) endorse the proposal; or  
27 (b) refuse to endorse the proposal.
- 28 (3) The Domestic Offsets Integrity Committee must not endorse the  
29 proposal unless the Committee is satisfied that, if the Minister were

- 1 to vary the methodology determination so as to give effect to the  
2 proposal:
- 3 (a) the varied determination would comply with the offsets  
4 integrity standards; and
- 5 (b) the varied determination would not specify a kind of offsets  
6 project by reference to a State or a part of a State; and
- 7 (c) the varied determination would comply with such  
8 requirements (if any) as are specified in regulations made for  
9 the purposes of paragraph 106(4)(e); and
- 10 (d) the method specified in the varied determination in  
11 accordance with paragraph 106(1)(c) or (d) would include a  
12 calculation of a baseline for the project; and
- 13 (e) in a case where:
- 14 (i) a method determined under subsection 10(3) of the  
15 *National Greenhouse and Energy Reporting Act 2007* is  
16 a method by which the amounts of the emissions of  
17 greenhouse gases from a particular source are to be  
18 measured for the purposes of that Act; and
- 19 (ii) the method specified in the varied methodology  
20 determination in accordance with paragraph 106(1)(c)  
21 or (d) involves the measurement of emissions of  
22 greenhouse gases from that source;
- 23 the varied methodology determination would provide that the  
24 emissions are to be measured, under the method specified in  
25 the varied methodology determination in accordance with  
26 paragraph 106(1)(c) or (d), in the same way as they are  
27 measured under the method determined under subsection  
28 10(3) of the *National Greenhouse and Energy Reporting Act*  
29 *2007*.
- 30 (4) If:
- 31 (a) a Domestic Offsets Integrity Committee member:
- 32 (i) is an SES employee in the Department; or
- 33 (ii) holds or performs the duties of an Executive Level 2  
34 position, or an equivalent position, in the Department;  
35 and
- 36 (b) the member advises the Committee that, if the Minister were  
37 to vary the methodology determination so as to give effect to

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1                           the proposal, the varied determination would not comply with  
2                           the offsets integrity standard set out in paragraph 133(1)(c);  
3                           then, for the purposes of paragraph (3)(a) of this section, the  
4                           Domestic Offsets Integrity Committee is to assume that the varied  
5                           determination would not comply with that offsets integrity  
6                           standard.

7                           Note:       Paragraph 133(1)(c) deals with consistency with the National  
8                           Inventory Report.

9                           *Consultation and publication*

- 10                          (5) The Domestic Offsets Integrity Committee must not endorse the  
11                          proposal unless the Committee has first:  
12                               (a) published on the Department's website:  
13                                   (i) the proposal; and  
14                                   (ii) a notice inviting the public to make a submission to the  
15                                       Committee on the proposal by a specified time limit;  
16                                       and  
17                               (b) considered any submissions that were received within that  
18                               time limit.
- 19                          (6) The time limit must not be shorter than 40 days.
- 20                          (7) If the Domestic Offsets Integrity Committee publishes the proposal  
21                          on the Department's website under subsection (5), the Committee  
22                          may also publish on the Department's website information given  
23                          by the applicant to the Committee in accordance with section 117  
24                          or 118.
- 25                          (8) However, the Domestic Offsets Integrity Committee must not  
26                          publish particular information under subsection (5) if the applicant  
27                          has requested the Committee not to publish the information.
- 28                          (9) A request under subsection (8) must:  
29                               (a) be in writing; and  
30                               (b) be in a form approved, in writing, by the Committee.
- 31                          (10) The Domestic Offsets Integrity Committee must refuse to endorse  
32                          the proposal if:



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- 1 (a) the applicant has made a request under subsection (8) for the  
2 Committee not to publish particular information; and  
3 (b) the Committee is satisfied that failing to publish that  
4 information could reasonably be expected to substantially  
5 prejudice the ability of the public to make well-informed  
6 submissions on the proposal under subsection (5).
- 7 (11) The Domestic Offsets Integrity Committee must also publish on  
8 the Department's website any submissions under subsection (5)  
9 received within the time limit referred to in subparagraph (5)(a)(ii).
- 10 (12) However, the Domestic Offsets Integrity Committee must not  
11 publish a particular submission made by a person if the person has  
12 requested the Committee not to publish the submission on the  
13 ground that publication of the submission could reasonably be  
14 expected to substantially prejudice the commercial interests of the  
15 person or another person.
- 16 (13) A request under subsection (12) must:  
17 (a) be in writing; and  
18 (b) be in a form approved, in writing, by the Committee.

19 *Notification*

- 20 (14) As soon as practicable after making a decision under  
21 subsection (2), the Domestic Offsets Integrity Committee must  
22 give the applicant a notice that sets out:  
23 (a) the decision; and  
24 (b) if the decision is to refuse to endorse the proposal—the  
25 reasons for the decision.

26 *Instrument is not a legislative instrument*

- 27 (15) An instrument under subsection (2) is not a legislative instrument.

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1       **121 Advice about endorsement of proposal**

2                       *Scope*

- 3               (1) This section applies if the Domestic Offsets Integrity Committee  
4               endorses a proposal for the variation of a methodology  
5               determination under section 120.

6                       *Advice*

- 7               (2) As soon as practicable after endorsing the proposal, the Committee  
8               must, by written notice given to the Minister, advise the Minister  
9               of the endorsement.

10       **Subdivision C—Duration of methodology determinations**

11       **122 Duration of methodology determinations**

- 12               (1) A methodology determination:  
13               (a) comes into force:  
14               (i) when it is made; or  
15               (ii) if a later time is specified in the determination—at that  
16               later time; and  
17               (b) unless sooner revoked, remains in force for:  
18               (i) the period specified in the determination; or  
19               (ii) if a longer period is specified in relation to the  
20               determination in a legislative instrument made by the  
21               Minister—that longer period.
- 22               (2) Paragraph (1)(a) has effect subject to:  
23               (a) subsection (3) of this section; and  
24               (b) section 130.

25               Note:       Section 130 deals with approval of the application of a specified  
26               methodology determination to a project with effect from the start of a  
27               reporting period.

- 28               (3) If a methodology determination is made on or before 30 June 2012,  
29               the determination may be expressed to have come into force at the  
30               start of 1 July 2010.

- 1 (4) If a methodology determination expires, this Act does not prevent  
2 the Minister from making a fresh methodology determination in  
3 the same terms as the expired determination.

4 **Subdivision D—Revocation of methodology determinations**

5 **123 Revocation of methodology determinations**

- 6 (1) The Minister may, by legislative instrument, revoke a methodology  
7 determination.
- 8 (2) Before revoking a methodology determination, the Minister must  
9 request the Domestic Offsets Integrity Committee to advise the  
10 Minister about whether the Minister should revoke the  
11 determination.
- 12 (3) In deciding whether to revoke a methodology determination, the  
13 Minister must have regard to the following:  
14 (a) whether the determination complies with the offsets integrity  
15 standards;  
16 (b) any advice given by the Domestic Offsets Integrity  
17 Committee under subsection (2);  
18 (c) such other matters (if any) as the Minister considers relevant.
- 19 (4) Subsection (1) of this section does not, by implication, limit the  
20 application of subsection 33(3) of the *Acts Interpretation Act 1901*  
21 to other instruments under this Act.
- 22 (5) If the Minister decides:  
23 (a) to revoke a methodology determination; or  
24 (b) not to revoke a methodology determination;  
25 the Minister must, as soon as practicable after making the decision,  
26 cause a copy of any advice given by the Domestic Offset Integrity  
27 Committee under subsection (2) in relation to the determination to  
28 be published on the Department's website.

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1       **Subdivision E—Applicable methodology determination**

2       **124 Applicable methodology determination for a reporting period**

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

7       **125 Original methodology determination continues to apply after**  
8                       **expiry**

9                       *Scope*

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

14                      *Continuation*

15                      (2) Despite the expiry:  
16                          (a) the original determination continues to apply to the project  
17                          during the remainder of the crediting period as if the original  
18                          determination had not expired; and  
19                          (b) no other methodology determination applies to the project  
20                          during the remainder of the crediting period.

21                      (3) However, if the Administrator approves, under section 130, the  
22                      application of another methodology determination to the project,  
23                      with effect from a particular time, subsection (2) does not apply to  
24                      the project during so much of the crediting period as occurs after  
25                      that time.

1 **126 Original methodology determination continues to apply after**  
2 **variation**

3 *Scope*

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

8 *Continuation*

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

19 **127 Original methodology determination continues to apply after**  
20 **revocation**

21 *Scope*

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

26 *Continuation*

- 27 (2) Despite the revocation:  
28 (a) the original determination continues to apply to the project  
29 during the remainder of the crediting period as if the original  
30 determination had not been revoked; and

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- 1 (b) no other methodology determination applies to the project  
2 during the remainder of the crediting period.
- 3 (3) However, if the Administrator approves, under section 130, the  
4 application of another methodology determination to the project,  
5 with effect from a particular time, subsection (2) does not apply to  
6 the project during so much of the crediting period as occurs after  
7 that time.

8 **128 Request to approve application of methodology determination to**  
9 **a project with effect from the start of a reporting period**

- 10 (1) During a reporting period for an eligible offsets project, the project  
11 proponent for the project may request the Administrator to approve  
12 the application of a specified methodology determination to the  
13 project with effect from the start of the reporting period.
- 14 (2) A request must:
- 15 (a) be in writing; and  
16 (b) be in a form approved, in writing, by the Administrator; and  
17 (c) be accompanied by such information as is specified in the  
18 regulations; and  
19 (d) be accompanied by such other documents (if any) as are  
20 specified in the regulations; and  
21 (e) be accompanied by the fee (if any) specified in the  
22 regulations.
- 23 (3) It is immaterial whether the end of the reporting period is known  
24 when the request is made.
- 25 (4) The approved form of request may provide for verification by  
26 statutory declaration of statements in requests.
- 27 (5) A fee specified under paragraph (2)(e) must not be such as to  
28 amount to taxation.

29 **129 Further information**

- 30 (1) The Administrator may, by written notice given to a person who  
31 made a request, require the person to give the Administrator,
-

1 within the period specified in the notice, further information in  
2 connection with the request.

- 3 (2) If the person breaches the requirement, the Administrator may, by  
4 written notice given to the person:  
5 (a) refuse to consider the request; or  
6 (b) refuse to take any action, or any further action, in relation to  
7 the request.

8 **130 Administrator may approve application of methodology**  
9 **determination to a project with effect from the start of a**  
10 **reporting period**

11 *Scope*

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

17 *Approval*

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

24 *Notification of approval*

- 25 (4) As soon as practicable after giving an approval under  
26 subsection (2), the Administrator must give a copy of the approval  
27 to the person who made the request.

28 *Refusal*

- 29 (5) If the Administrator decides to refuse to approve the application of  
30 the methodology determination to the project, the Administrator

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1 must give written notice of the decision to the person who made  
2 the request.

3 *Approval is not a legislative instrument*

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

6 **Subdivision F—Transitional**

7 **131 Transitional—pre-commencement application for endorsement**  
8 **of proposal**

9 *Scope*

- 10 (1) This section applies if, before the commencement of this section:  
11 (a) a person applied to the Interim Domestic Offsets Integrity  
12 Committee for the endorsement of a proposal for a  
13 methodology determination; and  
14 (b) the Committee neither:  
15 (i) endorsed the proposal; nor  
16 (ii) refused to endorse the proposal.
- 17 (2) To avoid doubt, the proposal did not have to be in the form of a  
18 draft methodology determination.

19 *Effect of application*

- 20 (3) The person's application has effect, after the commencement of  
21 this section, as if it were an application under section 108 for the  
22 endorsement of the proposal.

23 **132 Transitional—pre-commencement endorsement of proposal**

24 *Scope*

- 25 (1) This section applies if:  
26 (a) before the commencement of this section, a person applied to  
27 the Interim Domestic Offsets Integrity Committee for the



- 1 endorsement of a proposal for a methodology determination;  
2 and  
3 (b) before the commencement of this section, the Committee  
4 endorsed the proposal; and  
5 (c) assuming that:  
6 (i) sections 112 and 113 had been in force at all material  
7 times before the commencement of this section; and  
8 (ii) a reference in those sections to the Domestic Offsets  
9 Integrity Committee were a reference to the Interim  
10 Domestic Offsets Integrity Committee; and  
11 (iii) the reference in subsection 112(6) to 40 days were a  
12 reference to 30 days;  
13 the Interim Domestic Offsets Integrity Committee complied  
14 with those sections in relation to the proposal.
- 15 (2) To avoid doubt, the proposal did not have to be in the form of a  
16 draft methodology determination.

17 *Effect of application*

- 18 (3) The person's application has effect, after the commencement of  
19 this section, as if it were an application under section 108 for the  
20 endorsement of the proposal.

21 *Effect of proposal*

- 22 (4) This Act has effect as if the Domestic Offsets Integrity Committee  
23 had, immediately after the commencement of this section:  
24 (a) endorsed the proposal under section 112; and  
25 (b) advised the Minister of the endorsement under section 113.  
26

1 **Division 3—Offsets integrity standards**

2 **133 Offsets integrity standards**

- 3 (1) For the purposes of this Act, the *offsets integrity standards* are as  
4 follows:
- 5 (a) a project of a kind specified in a methodology determination  
6 in accordance with paragraph 106(1)(a) should be covered by  
7 the additionality test regulations;
  - 8 (b) to the extent to which a method specified in a methodology  
9 determination in accordance with paragraph 106(1)(c) or (d)  
10 involves ascertaining any of the following:
    - 11 (i) the removal of one or more greenhouse gases from the  
12 atmosphere;
    - 13 (ii) the reduction of emissions of one or more greenhouse  
14 gases into the atmosphere;
    - 15 (iii) the emission of one or more greenhouse gases into the  
16 atmosphere;the removal, reduction or emission, as the case may be,  
17 should be:
    - 18 (iv) measurable; and
    - 19 (v) capable of being verified;
  - 20 (c) a method specified in a methodology determination in  
21 accordance with paragraph 106(1)(c) or (d) should not be  
22 inconsistent with the methods set out in the National  
23 Inventory Report;
  - 24 (d) a method specified in a methodology determination in  
25 accordance with paragraph 106(1)(c) or (d) should be  
26 supported by relevant scientific results published in  
27 peer-reviewed literature; and
  - 28 (e) a method specified in a methodology determination in  
29 accordance with paragraph 106(1)(c) or (d) should provide  
30 that, in ascertaining whichever of the following is applicable:
    - 31 (i) the carbon dioxide equivalent net abatement amount for  
32 a project;
    - 33 (ii) the carbon dioxide equivalent net sequestration amount  
34 for a project;
    - 35

- 1                   there is to be a deduction of the carbon dioxide equivalence  
2                   of the amount that, under the determination, is taken to be the  
3                   total amount of greenhouse gases that are emitted from any  
4                   source or sources as a consequence of carrying out the  
5                   project;
- 6                   (f) a method specified in a methodology determination in  
7                   accordance with paragraph 106(1)(c) or (d) in relation to a  
8                   sequestration offsets project should provide for adjustments  
9                   to take account of significant cyclical variations that are  
10                  likely to occur in the amount of carbon sequestered in the  
11                  relevant carbon pool on the project area or project areas  
12                  during:
- 13                   (i) a 100-year period; or  
14                   (ii) if, at the time when the methodology determination was  
15                   made, another period was specified in the regulations—  
16                   that other period;
- 17                  (g) to the extent to which a method specified in a methodology  
18                  determination in accordance with paragraph 106(1)(c) or (d)  
19                  involves an estimate, projection or assumption—the estimate,  
20                  projection or assumption should be conservative;
- 21                  (h) if:
- 22                   (a) a method determined under subsection 10(3) of the  
23                   *National Greenhouse and Energy Reporting Act 2007* is  
24                   a method by which the amounts of the emissions of  
25                   greenhouse gases from a particular source are to be  
26                   measured for the purposes of that Act; and
- 27                   (b) a method specified in a methodology determination in  
28                   accordance with paragraph 106(1)(c) or (d) involves the  
29                   measurement of emissions of greenhouse gases from  
30                   that source;
- 31                  the methodology determination should provide that the  
32                  emissions are to be measured, under the method specified in  
33                  the methodology determination in accordance with paragraph  
34                  106(1)(c) or (d), in the same way as they are measured under  
35                  the method determined under subsection 10(3) of the  
36                  *National Greenhouse and Energy Reporting Act 2007*.

37                  Note 1:    For the additionality test, see section 41.



1 **Part 10—Multiple project proponents**

2 **Division 1—Introduction**

3 **134 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
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- 16
- If there are multiple project proponents for an offsets project, a reference in this Act to the project proponent is to be read as a reference to each of the project proponents.
  - Multiple project proponents for an offsets project may nominate a nominee for the purposes of:
    - (a) the service of documents; and
    - (b) the taking of eligible voluntary actions (for example, the making of an application).
  - If there are multiple project proponents for an offsets project, obligations are imposed on each of the proponents, but may be discharged by any of the proponents.

1 **Division 2—References to project proponents**

2 **135 References to project proponents**

3 *Sequestration offsets projects*

4 (1) If:

- 5 (a) an offsets project is a sequestration offsets project; and  
6 (b) there are 2 or more persons (the ***multiple project proponents***)  
7 who:  
8 (i) have joint responsibility for carrying out the project; and  
9 (ii) jointly have the legal right to carry out the project; and  
10 (iii) jointly hold the applicable carbon sequestration right in  
11 relation to the project area, or each of the project areas;

12 then:

- 13 (c) for the purposes of this Act, each of the multiple project  
14 proponents is a project proponent for the project; and  
15 (d) a reference in:  
16 (i) this Act; or  
17 (ii) the regulations; or  
18 (iii) another instrument made under this Act;  
19 to the project proponent for the offsets project is to be read as  
20 a reference to each of the multiple project proponents.

21 *Emissions avoidance offsets projects*

22 (2) If:

- 23 (a) an offsets project is an emissions avoidance offsets project;  
24 and  
25 (b) there are 2 or more persons (the ***multiple project proponents***)  
26 who:  
27 (i) have joint responsibility for carrying out the project; and  
28 (ii) jointly have the legal right to carry out the project;

29 then:

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

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- 1 (i) this Act; or  
2 (ii) the regulations; or  
3 (iii) any other instrument under this Act;  
4 to the project proponent for the offsets project is to be read as  
5 a reference to each of the multiple project proponents.  
6

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1 **Division 3—Nominee of multiple project proponents**

2 **136 Nomination of nominee by multiple project proponents**

3 *Scope*

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

7 *Nomination*

- 8 (2) The multiple project proponents may, by joint written notice given  
9 to the Administrator, nominate one of them as being their *nominee*  
10 in relation to the offsets project.

- 11 (3) The joint written notice must be in a form approved, in writing, by  
12 the Administrator.

- 13 (4) A notice under subsection (2) may accompany an application under  
14 this Act or the regulations. In this case, the nomination is taken to  
15 have been given immediately before the application was made.

16 *Revocation of nomination*

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

24 *Cessation of nomination—nominee ceases to be a project*  
25 *proponent*

- 26 (6) If:  
27 (a) a person has been nominated under subsection (2) in relation  
28 to an eligible offsets project; and  
29 (b) the nominee ceases to be one of the project proponents for  
30 the eligible offsets project;



1 the nomination ceases to be in force.

2 **137 Service of documents on nominee**

3 *Scope*

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

6 *Service of documents*

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

- 8 (a) the multiple project proponents have nominated a nominee  
9 under subsection 136(2) in relation to the project; and  
10 (b) the nomination is in force; and  
11 (c) a document relating to the eligible offsets project is required  
12 or permitted by this Act to be given to the project proponent;  
13 and  
14 (d) the document is given to the nominee;  
15 the document is taken to have been given to each of the multiple  
16 project proponents.

17 **138 Eligible voluntary action taken by nominee**

18 *Scope*

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

21 *Eligible voluntary action to be taken by nominee*

22 (2) If:

- 23 (a) the multiple project proponents have nominated a nominee  
24 under subsection 136(2) in relation to the project; and  
25 (b) the nomination is in force; and  
26 (c) the nominee takes an eligible voluntary action; and  
27 (d) the application, nomination, request or notice to which the  
28 eligible voluntary action relates is expressed to be made,

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- 1                                withdrawn or given, as the case may be, on behalf of the  
2                                multiple project proponents;  
3                                this Act and the regulations have effect as if:  
4                                (e) the application, nomination, request or notice to which the  
5                                eligible voluntary action relates were made, withdrawn or  
6                                given, as the case may be, by the multiple project proponents  
7                                jointly; and  
8                                (f) if the eligible voluntary action is the making of an application  
9                                under section 22 for the declaration of an offsets project as an  
10                                eligible offsets project—each reference in subparagraphs  
11                                27(4)(h)(vii) and (i)(v) to the applicant holding the applicable  
12                                carbon sequestration right in relation to the project were a  
13                                reference to the multiple project proponents jointly holding  
14                                the applicable carbon sequestration right in relation to the  
15                                project; and  
16                                (g) if the eligible voluntary action is the making of an  
17                                application, under regulations made for the purposes of  
18                                subsection 29(1), for the variation of the declaration of an  
19                                eligible offsets project—each reference (if any) in those  
20                                regulations to the applicant holding the applicable carbon  
21                                sequestration right in relation to the varied project were a  
22                                reference to the multiple project proponents jointly holding  
23                                the applicable carbon sequestration right in relation to the  
24                                varied project; and  
25                                (h) if the eligible voluntary action is the making of an  
26                                application—a reference in this Act or the regulations (other  
27                                than a reference mentioned in paragraph (f) or (g)) to the  
28                                applicant were a reference to each of the multiple project  
29                                proponents.  
30                                (3) The multiple project proponents are not entitled to take an eligible  
31                                voluntary action except in accordance with subsection (2).

1 **139 Unilateral revocation of declaration of eligible offsets project—**  
2 **failure of multiple project proponents to nominate a**  
3 **nominee**

- 4 (1) The regulations may make provision for and in relation to  
5 empowering the Administrator to revoke a declaration under  
6 section 27 in relation to an offsets project.
- 7 (2) Regulations made for the purposes of subsection (1) must not  
8 empower the Administrator to revoke a declaration unless:
- 9 (a) there are 2 or more project proponents (the *multiple project*  
10 *proponents*) for the offsets project; and  
11 (b) a declaration is in force under section 27 in relation to the  
12 project; and  
13 (c) the multiple project proponents have nominated a person  
14 under subsection 136(2); and  
15 (d) the nomination ceases to be in force; and  
16 (e) 90 days pass, and no new nomination under subsection  
17 136(2) is made by the multiple project proponents.
- 18 (3) Regulations made for the purposes of subsection (1) must require  
19 the Administrator to consult the multiple project proponents before  
20 deciding to revoke a declaration.

21 **140 Designation of nominee account**

22 *Scope*

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

29 *Request for nominee account*

- 30 (2) The nominee may:

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- 1 (a) request the Administrator, under regulations made for the  
2 purposes of subsection 10(1) of the *Australian National*  
3 *Registry of Emissions Units Act 2011*, to open a Registry  
4 account in the name of the nominee; and  
5 (b) request the Administrator to designate that account as the  
6 nominee account for the eligible offsets project.
- 7 (3) A request under paragraph (2)(b) must:  
8 (a) be in writing; and  
9 (b) be in a form approved, in writing, by the Administrator; and  
10 (c) be accompanied by such information as is specified in the  
11 regulations; and  
12 (d) be accompanied by such other documents (if any) as are  
13 specified in the regulations; and  
14 (e) be accompanied by the fee (if any) specified in the  
15 regulations.
- 16 (4) The approved form of request may provide for verification by  
17 statutory declaration of statements in requests.
- 18 (5) A fee specified under paragraph (3)(e) must not be such as to  
19 amount to taxation.

20 *Designation of nominee account*

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

24 **141 Issue of Australian carbon credit units to nominee account**

25 *Scope*

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

28 *Application for issue of Australian carbon credit units*

- 29 (2) If:

- 1 (a) the multiple project proponents have nominated a nominee  
2 under subsection 136(2) in relation to the project; and  
3 (b) the nomination is in force; and  
4 (c) a nominee account for the project is kept in the name of the  
5 nominee; and  
6 (d) the nominee makes an application under section 12 for the  
7 issue of a certificate of entitlement in respect of the project  
8 for a reporting period;  
9 paragraph 13(1)(c) does not apply to the application.

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

12 *Issue of Australian carbon credit units*

- 13 (3) If:  
14 (a) the multiple project proponents have nominated a nominee  
15 under subsection 136(2) in relation to the project; and  
16 (b) the nomination is in force; and  
17 (c) a nominee account for the project is kept in the name of the  
18 nominee; and  
19 (d) apart from this subsection, the Administrator is required  
20 under section 11 to issue one or more Australian carbon  
21 credit units to the multiple project proponents in relation to  
22 the eligible offsets project;  
23 then:  
24 (e) the Administrator must comply with the requirement by  
25 issuing the units to the nominee and making an entry for the  
26 units in the nominee account; and  
27 (f) subsections 11(5) and (6) do not apply to the issue of the  
28 units.  
29 (4) If:  
30 (a) no nomination made by the multiple project proponents  
31 under subsection 136(2) in relation to the project is in force;  
32 and  
33 (b) apart from this subsection, the Administrator is required  
34 under section 11 to issue one or more Australian carbon

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1 credit units to the multiple project proponents in relation to  
2 the eligible offsets project;  
3 the Administrator must not issue the units.

4 **142 Units held in nominee account**

5 *Scope*

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

8 *Units held in account*

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

12 **143 Instructions in relation to nominee account**

13 *Scope*

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

16 *Instructions by nominee*

17 (2) A person is not entitled to give instructions under:  
18 (a) this Act; or  
19 (b) the *Australian National Registry of Emissions Units Act*  
20 *2011*;  
21 to the Administrator in relation to the nominee account unless:  
22 (c) the account is kept in the name of the person; and  
23 (d) the person has been nominated as a nominee under  
24 subsection 136(2) in relation to the project; and  
25 (e) the nomination is in force.  
26 (3) If an instruction complies with subsection (2), the instruction is  
27 taken to have been given on behalf of the project proponents for  
28 the project.

1 **144 Updating nominee account details on change of nominee**

2 *Scope*

- 3 (1) This section applies if:
- 4 (a) there are 2 or more project proponents (the *multiple project*
  - 5 *proponents*) for an eligible offsets project; and
  - 6 (b) the multiple project proponents have nominated a nominee
  - 7 under subsection 136(2) in relation to the project; and
  - 8 (c) a nominee account for the project is kept in the name of the
  - 9 nominee; and
  - 10 (d) the nomination ceases to be in force; and
  - 11 (e) a new nomination of a nominee (the *new nominee*) is made
  - 12 under subsection 136(2).

13 *Updating account details*

- 14 (2) As soon as practicable after receiving the new nomination, the
- 15 Administrator must make the necessary alterations in the Registry
- 16 to substitute the name of the new nominee for the name of the old
- 17 nominee.
- 18

1 **Division 4—Obligations of multiple project proponents**

2 **145 Obligations of multiple project proponents**

3 *Scope*

4 (1) This section applies if:

5 (a) there are 2 or more project proponents (the *multiple project*  
6 *proponents*) for the eligible offsets project; and

7 (b) any of the following:

8 (i) this Act;

9 (ii) the regulations;

10 (iii) another instrument made under this Act;

11 imposes an obligation on the project proponent for the  
12 project.

13 *Obligations of project proponent*

14 (2) The obligation is imposed on each of the multiple project  
15 proponents, but may be discharged by any of the multiple project  
16 proponents.

17 (3) The regulations may exempt a specified obligation from the scope  
18 of subsection (2).  
19



1 **Part 11—Australian carbon credit units**

2 **Division 1—Introduction**

3 **146 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
- 7
- 8
- 9
- |  |
|--|
| <ul style="list-style-type: none"><li>• The Administrator may issue Australian carbon credit units.</li><li>• An Australian carbon credit unit is generally transferable.</li><li>• Entries may be made in Registry accounts for Australian carbon credit units.</li></ul> |
|--|

1       **Division 2—Issue of Australian carbon credit units**

2       **147 Issue of Australian carbon credit units**

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

5       **148 How Australian carbon credit units are to be issued**

6                       (1) The Administrator is to issue an Australian carbon credit unit to a  
7                       person by making an entry for the unit in a Registry account kept  
8                       by the person.

9                       (2) The Administrator must not issue an Australian carbon credit unit  
10                      to a person unless the person has a Registry account.

11       **149 Circumstances in which Australian carbon credit units may be**  
12                      **issued**

13                      The Administrator must not issue an Australian carbon credit unit  
14                      otherwise than in accordance with Part 2.  
15

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

3 **150 An Australian carbon credit unit is personal property**

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

7 **151 Transfer of Australian carbon credit units**

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

- 11 (a) a *transfer* of the unit from the first Registry account to a  
12 Registry account kept by another person consists of:  
13 (i) the removal of the entry for the unit from the first  
14 Registry account; and  
15 (ii) the making of an entry for the unit in the Registry  
16 account kept by the other person; and  
17 (b) the *transfer* of the unit from the first Registry account to  
18 another Registry account kept by the first person consists of:  
19 (i) the removal of the entry for the unit from the first  
20 Registry account; and  
21 (ii) the making of an entry for the unit in the other Registry  
22 account kept by the first person.

23 **152 Transmission of Australian carbon credit units by assignment**

- 24 (1) A transmission by assignment of an Australian carbon credit unit is  
25 of no force until:  
26 (a) the transferor, by electronic notice transmitted to the  
27 Administrator, instructs the Administrator to transfer the unit  
28 from the relevant Registry account kept by the transferor to a  
29 Registry account kept by the transferee; and  
30 (b) the Administrator complies with that instruction.  
31 (2) An instruction under paragraph (1)(a) must set out:

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- 1 (a) the account number of the transferor's Registry account; and  
2 (b) the account number of the transferee's Registry account.
- 3 (3) If the Administrator receives an instruction under paragraph (1)(a),  
4 the Administrator must comply with the instruction as soon as  
5 practicable after receiving it.
- 6 (4) The Registry must set out a record of each instruction under  
7 paragraph (1)(a).
- 8 (5) If the transferor is the Commonwealth, the Minister may give an  
9 instruction under subsection (1) on behalf of the transferor.

10 **153 Transmission of Australian carbon credit units by operation of**  
11 **law etc.**

12 *Scope*

- 13 (1) This section applies if an Australian carbon credit unit is  
14 transmitted from a person (the *transferor*) to another person (the  
15 *transferee*) by any lawful means other than by a transfer under  
16 section 152.

17 *Declaration of transmission*

- 18 (2) The transferee must, within 90 days after the transmission, give the  
19 Administrator:  
20 (a) a declaration of transmission; and  
21 (b) such evidence of transmission as is specified in the  
22 regulations.
- 23 (3) A declaration of transmission must be made in accordance with the  
24 regulations.
- 25 (4) If the transferee does not already have a Registry account, the  
26 declaration of transmission must be accompanied by a request,  
27 under regulations made for the purposes of subsection 10(1) of the  
28 *Australian National Registry of Emissions Units Act 2011*, for the  
29 Administrator to open a Registry account in the name of the  
30 transferee.

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) of the *Australian National*  
19 *Registry of Emissions Units Act 2011*, the Administrator has  
20 opened a Registry account in the name of the transferee;

21 the Administrator must, as soon as practicable after opening the  
22 Registry account, transfer the unit from the relevant Registry  
23 account kept by the transferor to the Registry account kept by the  
24 transferee.

25 *Record*

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

29 *When the transferee is the Commonwealth*

30 (10) If the transferee is the Commonwealth, the Minister may give:

31 (a) the declaration of transmission; and

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- 1 (b) the evidence mentioned in paragraph (2)(b);  
2 on behalf of the transferee.

3 *Notification*

- 4 (11) If:  
5 (a) the Administrator decides to:  
6 (i) extend the 90-day period mentioned in subsection (2);  
7 or  
8 (ii) refuse to extend the 90-day period mentioned in  
9 subsection (2); and  
10 (b) the Administrator made the decision in response to an  
11 application;  
12 the Administrator must give written notice of the decision to the  
13 applicant.

14 **154 Outgoing international transfers of Australian carbon credit**  
15 **units**

16 *Scope*

- 17 (1) This section applies if:  
18 (a) a person (the *first person*) keeps a Registry account in which  
19 there is an entry for an Australian carbon credit unit; and  
20 (b) the first person, by electronic notice transmitted to the  
21 Administrator, instructs the Administrator to transfer the unit  
22 from the Registry account to:  
23 (i) a foreign account kept by another person; or  
24 (ii) a foreign account kept by the first person; and  
25 (c) if the unit is a Kyoto Australian carbon credit unit—the  
26 instruction does not contravene regulations made for the  
27 purposes of section 155 of this Act or subsection 41(3) of the  
28 *Australian National Registry of Emissions Units Act 2011*.  
29 (2) An instruction under subsection (1) must set out:  
30 (a) the account number of the relevant Registry account kept by  
31 the first person; and  
32 (b) such other information as is specified in the regulations.

1 *Compliance with instruction*

- 2 (3) If the Administrator receives an instruction under subsection (1),  
3 the Administrator must take such steps as are required by the  
4 regulations.
- 5 (4) Regulations made for the purposes of subsection (3) may require  
6 the Administrator to remove the entry for the unit from the relevant  
7 Registry account kept by the first person.
- 8 (5) If the unit is a Kyoto Australian carbon credit unit, regulations  
9 made for the purposes of subsection (3) may require the  
10 Administrator to transfer an assigned amount unit from a  
11 Commonwealth holding account to a voluntary cancellation  
12 account.
- 13 (6) If the Administrator takes steps under subsection (3) in relation to  
14 an instruction, the Registry must set out a record of the instruction.
- 15 (7) If the first person is the Commonwealth, the Minister may give an  
16 instruction under subsection (1) on behalf of the first person.

17 **155 Restrictions on outgoing international transfers of Kyoto**  
18 **Australian carbon credit units**

19 The regulations may prevent, restrict or limit the transfer of Kyoto  
20 Australian carbon credit units from a Registry account to a foreign  
21 account.

22 **156 Transfer of Australian carbon credit units to another Registry**  
23 **account held by the transferor**

24 *Scope*

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

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- 1 from the first Registry account to another Registry account  
2 kept by the person; and  
3 (c) the instruction sets out:  
4 (i) the account number of the first Registry account; and  
5 (ii) the account number of the other Registry account.

6 *Compliance with instruction*

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

12 **157 Exchange of Kyoto Australian carbon credit units for Kyoto**  
13 **units**

14 *Scope*

- 15 (1) This section applies if:  
16 (a) a person keeps a Registry account in which there is an entry  
17 for a Kyoto Australian carbon credit unit issued to the  
18 person; and  
19 (b) before 1 July 2013, the person, by electronic notice  
20 transmitted to the Administrator, instructs the Administrator  
21 to exchange the unit for whichever of the following units is  
22 specified in the instruction:  
23 (i) an assigned amount unit;  
24 (ii) if the Kyoto Australian carbon credit unit was issued in  
25 respect of a sequestration offsets project—a removal  
26 unit;  
27 (iii) if the Kyoto Australian carbon credit unit was issued in  
28 respect of a joint implementation project—an emission  
29 reduction unit; and  
30 (c) the instruction sets out the account number of the Registry  
31 account; and  
32 (d) the conditions (if any) specified in the regulations are  
33 satisfied; and



- 1 (e) the instruction does not contravene regulations made for the  
2 purposes of subsection 41(4) of the *Australian National*  
3 *Registry of Emissions Units Act 2011*.

4 *Compliance with instruction*

- 5 (2) If the Administrator receives an instruction under paragraph (1)(b),  
6 the Administrator must take such steps as are required by the  
7 regulations.
- 8 (3) Regulations made for the purposes of subsection (2) may require  
9 the Administrator to:
- 10 (a) cancel the Kyoto Australian carbon credit unit; and  
11 (b) remove the entry for the Kyoto Australian carbon credit unit  
12 from the Registry account; and  
13 (c) transfer an assigned amount unit, a removal unit, or an  
14 emission reduction unit, as the case requires, from a  
15 Commonwealth holding account to the Registry account.
- 16 (4) For the purposes of this Act, the assigned amount unit, removal  
17 unit or emission reduction unit transferred to the Registry account  
18 is taken to have been exchanged for the Kyoto Australian carbon  
19 credit unit.
- 20 (5) The Registry must set out a record of the instruction under  
21 paragraph (1)(b).

22 **158 Equitable interests in relation to an Australian carbon credit**  
23 **unit**

- 24 (1) This Act does not affect:  
25 (a) the creation of; or  
26 (b) any dealings with; or  
27 (c) the enforcement of;  
28 equitable interests in relation to an Australian carbon credit unit.
- 29 (2) Subsection (1) has effect subject to:  
30 (a) section 50; and  
31 (b) regulations made for the purposes of section 51; and  
32 (c) section 142.

**Part 11** Australian carbon credit units

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

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1  
2

(3) This section is enacted for the avoidance of doubt.

1 **Part 12—Publication of information**

2 **Division 1—Introduction**

3 **159 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
- 6
- 7
- |   |
|---|
| <ul style="list-style-type: none"><li>• The Administrator must publish certain information about the operation of this Act.</li></ul> |
|---|

1 **Division 2—Information about units**

2 **160 Information about issue of Australian carbon credit units**

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

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

9 **161 Quarterly reports about issue of Australian carbon credit units**

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

14 **162 Publication of concise description of the characteristics of  
15 Australian carbon credit units**

16 The Administrator must:

- 17 (a) before 31 December 2011, publish on the Administrator's  
18 website a statement setting out a concise description of the  
19 characteristics of Australian carbon credit units; and  
20 (b) keep that statement up-to-date.  
21

1 **Division 3—Information about voluntary cancellation of**  
2 **units**

3 **163 Information about number of voluntarily cancelled Australian**  
4 **carbon credit units**

5 As soon as practicable after one or more Australian carbon credit  
6 units held by a person are cancelled under section 173, the  
7 Administrator must publish on the Administrator's website:

- 8 (a) the name of the person; and  
9 (b) the total number of Australian carbon credit units cancelled.  
10

1 **Division 4—Information about relinquishment**  
2 **requirements**

3 **164 Information about relinquishment requirements**

4 *Scope*

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

8 *Relinquishment requirement*

- 9 (2) The Administrator must publish on the Administrator's website:

- 10 (a) the name of the person; and  
11 (b) details of the relinquishment requirement.

- 12 (3) If any of the following paragraphs applies:

- 13 (a) the decision to require the person to relinquish a specified  
14 number of Australian carbon credit units is being  
15 reconsidered by the Administrator under section 242;  
16 (b) the decision to require the person to relinquish a specified  
17 number of Australian carbon credit units has been affirmed or  
18 varied by the Administrator under section 242, and the  
19 decision as so affirmed or varied is the subject of an  
20 application for review by the Administrative Appeals  
21 Tribunal;  
22 (c) the decision to require the person to relinquish a specified  
23 number of Australian carbon credit units is the subject of an  
24 application for review by the Administrative Appeals  
25 Tribunal;

26 the Administrator must:

- 27 (d) publish an appropriate annotation on the Administrator's  
28 website; and  
29 (e) if paragraph (a) applies—when the Administrator notifies the  
30 applicant for reconsideration of the Administrator's decision  
31 on the reconsideration, the Administrator must publish an  
32 appropriate annotation on the Administrator's website; and

- 1 (f) if paragraph (b) or (c) applies—when the review by the  
2 Administrative Appeals Tribunal (including any court  
3 proceedings arising out of the review) has been finalised, the  
4 Administrator must publish an appropriate annotation on the  
5 Administrator’s website.

6 **165 Information about unpaid administrative penalties**

7 *Scope*

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

16 *Penalty amount*

- 17 (2) The Administrator must publish on the Administrator’s website:  
18 (a) the name of the person; and  
19 (b) details of the unpaid penalty amount.

20 **166 Information about number of relinquished units**

21 *Scope*

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

28 *Australian carbon credit units relinquished*

- 29 (2) As soon as practicable after receiving the relinquishment notice,  
30 the Administrator must publish on the Administrator’s website:

**Part 12** Publication of information

**Division 4** Information about relinquishment requirements

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- 1 (a) the name of the person; and  
2 (b) the total number of Australian carbon credit units  
3 relinquished.  
4



1 **Division 5—Register of Offsets Projects**

2 **167 Register of Offsets Projects**

- 3 (1) The Administrator must keep a register, to be known as the  
4 Register of Offsets Projects.
- 5 (2) The Register of Offsets Projects is to be maintained by electronic  
6 means.
- 7 (3) The Register of Offsets Projects is to be made available for  
8 inspection on the Administrator’s website.
- 9 (4) The Administrator must ensure that the Register of Offsets Projects  
10 is up-to-date.

11 **168 Entries in the Register**

- 12 (1) The Register of Offsets Projects must set out, for each eligible  
13 offsets project:
- 14 (a) the name of the project; and  
15 (b) the project area or project areas; and  
16 (c) a description of the project; and  
17 (d) whether the project is a joint implementation project; and  
18 (e) the location of the project; and  
19 (f) the project proponent for the project; and  
20 (g) the name of the applicable methodology determination; and  
21 (h) whether the relevant declaration under section 27 is subject to  
22 a condition that all relevant regulatory approvals must be  
23 obtained before the end of the first crediting period for the  
24 project; and  
25 (i) if the project area, or any of the project areas, is covered by a  
26 regional natural resource management plan—whether the  
27 project is consistent with the plan; and  
28 (j) whether the project is subject to the voluntary automatic unit  
29 cancellation regime;  
30 (k) if any Kyoto Australian carbon credit units have been issued  
31 in relation to the project in accordance with Part 2:  
32 (i) the total number of units so issued; and
-

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- 1 (ii) the financial year, or each of the financial years, in  
2 which those units were so issued; and
- 3 (iii) the name of the person, or each of the persons, to whom  
4 those units have been issued; and
- 5 (iv) if any of those units have been exchanged for assigned  
6 amount units—the total number of units so exchanged,  
7 and the financial year, or each of the financial years, in  
8 which those units were so exchanged; and
- 9 (v) if any of those units have been exchanged for removal  
10 units—the total number of units so exchanged, and the  
11 financial year, or each of the financial years, in which  
12 those units were so exchanged; and
- 13 (vi) if any of those units have been exchanged for emission  
14 reduction units—the total number of units so  
15 exchanged, and the financial year, or each of the  
16 financial years, in which those units were so exchanged;  
17 and
- 18 (l) if any non-Kyoto Australian carbon credit units have been  
19 issued in relation to the project in accordance with Part 2:  
20 (i) the total number of units so issued; and  
21 (ii) the financial year, or each of the financial years, in  
22 which those units were so issued; and  
23 (iii) the name of the person, or each of the persons, to whom  
24 those units have been issued; and
- 25 (m) if any Australian carbon credit units have been relinquished  
26 in order to comply with a requirement under Part 7 in relation  
27 to the project—the total number of units so relinquished; and
- 28 (n) if the project area or project areas are subject to a carbon  
29 maintenance obligation:  
30 (i) a statement to that effect; and  
31 (ii) the net total number of Australian carbon credit units  
32 issued in relation to the project in accordance with  
33 Part 2; and
- 34 (o) if:  
35 (i) the project proponent for the project has requested the  
36 Administrator that particular information about the  
37 environmental benefits, or community benefits, of the  
38 project be set out in the Register of Offsets Projects; and
-

- 1 (ii) the request has not been withdrawn; and  
2 (iii) the requested information meets the requirements  
3 specified in the regulations;  
4 the requested information; and  
5 (p) if the project is a joint implementation project—such other  
6 information relating to the project as is specified in the  
7 regulations; and  
8 (q) such other information (if any) relating to the project as the  
9 Administrator considers appropriate.
- 10 (2) Paragraph (1)(b) has effect subject to section 169.
- 11 (3) If one or more areas of land that were formerly a project area or  
12 project areas of an eligible offsets project are subject to a carbon  
13 maintenance obligation, the Register of Offsets Projects must:  
14 (a) set out a statement to that effect; and  
15 (b) identify the area or areas of land; and  
16 (c) set out the net total number of Australian carbon credit units  
17 issued in relation to the project in accordance with Part 2.
- 18 (4) Regulations made for the purposes of paragraph (1)(p) must be  
19 consistent with the Kyoto rules.

20 **169 Requests for information about project area not to be set out in**  
21 **the Register**

- 22 (1) The Register of Offsets Projects must not set out the project area or  
23 project areas for an eligible offsets project if:  
24 (a) the project proponent for the project has requested the  
25 Administrator not to set out the project area or project areas  
26 in the Register of Offsets Projects; and  
27 (b) the Administrator is satisfied that:  
28 (i) the setting out of the project area or project areas could  
29 reasonably be expected to substantially prejudice the  
30 commercial interests of the project proponent or another  
31 person; and  
32 (ii) the prejudice outweighs the public interest in the setting  
33 out of the project area or project areas.

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- 1                   (2) A request under subsection (1) must:  
2                         (a) be in writing; and  
3                         (b) be in a form approved, in writing, by the Administrator.
- 4                   (3) The Administrator must take all reasonable steps to ensure that a  
5                         decision is made on the request within 30 days after the request  
6                         was made.
- 7                   (4) If the Administrator decides to refuse the request, the  
8                         Administrator must give written notice of the decision to the  
9                         project proponent.  
10

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## Part 13—Fraudulent conduct

### 170 Simplified outline

The following is a simplified outline of this Part:

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

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

#### *Scope*

- (1) This section applies if:
- (a) one or more Australian carbon credit units were issued to a person on a particular occasion; and
  - (b) the person has been convicted of an offence against:
    - (i) section 134.1 of the *Criminal Code*; or
    - (ii) section 134.2 of the *Criminal Code*; or
    - (iii) section 135.1 of the *Criminal Code*; or
    - (iv) section 135.2 of the *Criminal Code*; or
    - (v) section 135.4 of the *Criminal Code*; or
    - (vi) section 136.1 of the *Criminal Code*; or
    - (vii) section 137.1 of the *Criminal Code*; or
    - (viii) section 137.2 of the *Criminal Code*; and
  - (c) an appropriate court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

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

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1 *Relinquishment*

- 2 (2) The court may, on application made by the Director of Public  
3 Prosecutions or the Administrator, order the person:  
4 (a) to relinquish a specified number of:  
5 (i) Australian carbon credit units; or  
6 (ii) Kyoto Australian carbon credit units; or  
7 (iii) non-Kyoto Australian carbon credit units;  
8 not exceeding the number of Australian carbon credit units  
9 issued as mentioned in paragraph (1)(a); and  
10 (b) to do so by a specified time.

11 Note 1: See also section 177 (transfer of certain units instead of  
12 relinquishment of Kyoto Australian carbon credit units).

13 Note 2: See also section 178 (transfer of certain units instead of  
14 relinquishment of non-Kyoto Australian carbon credit units).

15 *Compliance*

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

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

- 19 (4) The person does not comply with an order under subsection (2)  
20 unless the notice of relinquishment under section 175 specifies the  
21 order.

- 22 (5) To avoid doubt, the person is required to comply with an order  
23 under subsection (2) even if:

- 24 (a) the person is not the registered holder of any Australian  
25 carbon credit units; or  
26 (b) the person is not the registered holder of the number of  
27 Australian carbon credit units required to be relinquished; or  
28 (c) if the order requires the person to relinquish Kyoto Australian  
29 carbon credit units:  
30 (i) the person is not the registered holder of any Kyoto  
31 Australian carbon credit units; or  
32 (ii) the person is not the registered holder of the number of  
33 Kyoto Australian carbon credit units required to be  
34 relinquished; or

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- 1 (d) if the order requires the person to relinquish non-Kyoto  
2 Australian carbon credit units:  
3 (i) the person is not the registered holder of any non-Kyoto  
4 Australian carbon credit units; or  
5 (ii) the person is not the registered holder of the number of  
6 non-Kyoto Australian carbon credit units required to be  
7 relinquished.

8 *Conviction*

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

11 *Copy of order*

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

14 *Appropriate court*

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

20 *Spent convictions*

- 21 (9) Nothing in this section affects the operation of Part VIIC of the  
22 *Crimes Act 1914* (which includes provisions that, in certain  
23 circumstances, relieve persons from the requirement to disclose  
24 spent convictions and require persons aware of such convictions to  
25 disregard them).  
26

1 **Part 14—Voluntary cancellation of Australian**  
2 **carbon credit units**  
3

4 **172 Simplified outline**

5 The following is a simplified outline of this Part:

- 6 • If a person is the registered holder of one or more Australian  
7 carbon credit units, the person may request the Administrator  
8 to cancel any or all of those units.

9 **173 Voluntary cancellation of Australian carbon credit units**

10 (1) If a person is the registered holder of one or more Australian  
11 carbon credit units, the person may, by electronic notice  
12 transmitted to the Administrator, request the Administrator to  
13 cancel any or all of those units.

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

- 15 (a) specify the Australian carbon credit unit or units that are to  
16 be cancelled; and  
17 (b) specify the account number or account numbers of the  
18 person's Registry account, or the person's Registry accounts,  
19 in which there is an entry or entries for the Australian carbon  
20 credit unit or units that are to be cancelled.

21 (3) If the Administrator receives a notice under subsection (1) in  
22 relation to an Australian carbon credit unit:

- 23 (a) the unit is cancelled; and  
24 (b) the Administrator must remove the entry for the unit from the  
25 person's Registry account in which there is an entry for the  
26 unit; and  
27 (c) if the unit is a Kyoto Australian carbon credit unit:  
28 (i) the Minister must, by written notice given to the  
29 Administrator, direct the Administrator to transfer a  
30 Kyoto unit from a Commonwealth holding account to a



- 1                                   voluntary cancellation account before the end of the  
2                                   true-up period for the relevant commitment period; and  
3                           (ii) the Administrator must comply with a direction under  
4                                   subparagraph (i).
- 5           (4) The Registry must set out a record of each notice under  
6                                   subsection (1).  
7

**Part 15** Relinquishment of Australian carbon credit units

**Division 1** Introduction

Section 174

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1 **Part 15—Relinquishment of Australian carbon**  
2 **credit units**

3 **Division 1—Introduction**

4 **174 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
- 7
- 8
- 9
- 10
- 11
- |  |
|--|
| <ul style="list-style-type: none"><li>• If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Administrator, relinquish any or all of those units.</li><li>• An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act.</li></ul> |
|--|

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

15 Note 2: A person may be required to relinquish Australian carbon credit units  
16 under Part 7.  
17

1 **Division 2—How Australian carbon credit units are**  
2 **relinquished**

3 **175 How Australian carbon credit units are relinquished**

- 4 (1) If a person is the registered holder of one or more Australian  
5 carbon credit units, the person may, by electronic notice  
6 transmitted to the Administrator, relinquish any or all of those  
7 units.
- 8 (2) A notice under subsection (1) must:
- 9 (a) specify the Australian carbon credit unit or units that are  
10 being relinquished; and
  - 11 (b) if the Australian carbon credit unit or units are being  
12 relinquished in order to comply with a requirement under  
13 Part 7—specify the requirement to which the relinquishment  
14 relates; and
  - 15 (c) if the Australian carbon credit unit or units are being  
16 voluntarily relinquished in order to satisfy a condition for  
17 revocation of a section 27 declaration in relation to an offsets  
18 project—set out a statement to that effect; and
  - 19 (d) if the Australian carbon credit unit or units are being  
20 voluntarily relinquished in order to satisfy a condition for  
21 revocation of a subsection 97(2) declaration—set out a  
22 statement to that effect; and
  - 23 (e) if the Australian carbon credit unit or units are being  
24 relinquished in order to comply with an order under  
25 subsection 171(2) (fraudulent conduct)—specify the order to  
26 which the relinquishment relates; and
  - 27 (f) specify the account number or account numbers of the  
28 person's Registry account, or the person's Registry accounts,  
29 in which there is an entry or entries for the Australian carbon  
30 credit unit or units that are being relinquished.
- 31 (3) If:
- 32 (a) an Australian carbon credit unit is relinquished by a person in  
33 order to comply with an order under subsection 171(2); and
  - 34 (b) the order was made because the person was convicted by a  
35 court of an offence that relates to Part 2;

**Part 15** Relinquishment of Australian carbon credit units  
**Division 2** How Australian carbon credit units are relinquished

**Section 175**

---

- 1                   then:  
2                   (c) the unit is cancelled; and  
3                   (d) the Administrator must remove the entry for the unit from the  
4                   person's Registry account in which there is an entry for the  
5                   unit.
- 6                   (4) If:  
7                   (a) an Australian carbon credit unit is relinquished by a person in  
8                   order to comply with an order under subsection 171(2); and  
9                   (b) the order was made because the person was convicted by a  
10                  court of an offence that does not relate to Part 2;  
11                  then:  
12                  (c) the Administrator must transfer the unit from the person's  
13                  Registry account in which there is an entry for the unit to the  
14                  Commonwealth relinquished units account; and  
15                  (d) when the unit is transferred to the Commonwealth  
16                  relinquished units account, property in the unit is transferred  
17                  to the Commonwealth.
- 18                  (5) If:  
19                  (a) an Australian carbon credit unit is relinquished by a person in  
20                  order to comply with a requirement under Part 7; or  
21                  (b) an Australian carbon credit unit is voluntarily relinquished in  
22                  order to satisfy a condition for revocation of a section 27  
23                  declaration in relation to an offsets project; or  
24                  (c) an Australian carbon credit unit is voluntarily relinquished in  
25                  order to satisfy a condition for revocation of a subsection  
26                  97(2) declaration;  
27                  then:  
28                  (d) the unit is cancelled; and  
29                  (e) 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                  (6) The Registry must set out a record of each notice under  
33                  subsection (1).

1 **176 Deemed relinquishment**

2 *Scope*

3 (1) This section applies if:

- 4 (a) under this Act, a person is subject to a requirement to  
5 relinquish a particular number of Australian carbon credit  
6 units (the *relinquishment number*); and  
7 (b) under section 11, the Administrator is required to issue to the  
8 person a particular number of Australian carbon credit units  
9 (the *issue number*).

10 *Deemed relinquishment*

11 (2) If the issue number exceeds the relinquishment number:

- 12 (a) the person is taken, immediately after the issue of the units  
13 mentioned in paragraph (1)(b) of this section, to have, by  
14 electronic notice transmitted to the Administrator under  
15 subsection 175(1), relinquished a number of those units equal  
16 to the relinquishment number; and  
17 (b) that notice is taken to have specified, as the units that are  
18 being relinquished, such units as are determined by the  
19 Administrator; and  
20 (c) that notice is taken to have specified the requirement  
21 mentioned in paragraph (1)(a) of this section as the  
22 requirement to which the relinquishment relates.

23 (3) If the relinquishment number equals or exceeds the issue number:

- 24 (a) the person is taken, immediately after the issue of the units  
25 mentioned in paragraph (1)(b) of this section, to have, by  
26 electronic notice transmitted to the Administrator under  
27 subsection 175(1), relinquished all of the units mentioned in  
28 paragraph (1)(b) of this section; and  
29 (b) that notice is taken to have specified, as the units that are  
30 being relinquished, all of the units mentioned in  
31 paragraph (1)(b); and  
32 (c) that notice is taken to have specified the requirement  
33 mentioned in paragraph (1)(a) of this section as the  
34 requirement to which the relinquishment relates.

Section 177

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1 **177 Transfer of certain units instead of relinquishment of Kyoto**  
2 **Australian carbon credit units**

3 *Scope*

- 4 (1) This section applies if, under this Act:
- 5 (a) a person is required to relinquish a particular number of  
6 Kyoto Australian carbon credit units; or
  - 7 (b) a particular number of Kyoto Australian carbon credit units  
8 are being voluntarily relinquished by a person in order to  
9 satisfy a condition for revocation of a section 27 declaration  
10 in relation to an offsets project; or
  - 11 (c) a particular number of Kyoto Australian carbon credit units  
12 are being voluntarily relinquished by a person in order to  
13 satisfy a condition for revocation of a subsection 97(2)  
14 declaration.

15 *Transfer of certain units instead of relinquishment*

- 16 (2) The person may:
- 17 (a) transfer to the Commonwealth an equal number of substitute  
18 units; and
  - 19 (b) by electronic notice transmitted to the Administrator, inform  
20 the Administrator that the transfer is instead of the  
21 relinquishment of the Kyoto Australian carbon credit units.

22 Note: For *substitute unit*, see subsection (6).

- 23 (3) A notice under subsection (2) must:
- 24 (a) specify the substitute units that are being transferred; and
  - 25 (b) if paragraph (1)(a) applies—specify the requirement  
26 concerned; and
  - 27 (c) if paragraph (1)(b) applies—a statement to the effect that the  
28 units are being voluntarily relinquished in order to satisfy a  
29 condition for revocation of a section 27 declaration in  
30 relation to an offsets project; and
  - 31 (d) if paragraph (1)(c) applies—a statement to the effect that the  
32 units are being voluntarily relinquished in order to satisfy a  
33 condition for revocation of a subsection 97(2) declaration.

- 1 (4) A transfer under subsection (2) must be in accordance with the  
2 regulations.

3 *Consequences of transfer*

- 4 (5) If the person transfers the substitute units specified in the notice  
5 under subsection (2), this Act (other than subsections 175(3), (4)  
6 and (5)) has effect as if the person had relinquished the Kyoto  
7 Australian carbon credit units:  
8 (a) if paragraph (1)(a) applies—in order to comply with the  
9 requirement mentioned in that paragraph; or  
10 (b) if paragraph (1)(b) applies—in order to satisfy a condition for  
11 revocation of a section 27 declaration in relation to an offsets  
12 project; or  
13 (c) if paragraph (1)(c) applies—in order to satisfy a condition for  
14 revocation of a subsection 97(2) declaration.

15 *Substitute unit*

- 16 (6) For the purposes of this section, each of the following is a  
17 **substitute unit**:  
18 (a) a certified emission reduction (other than a temporary  
19 certified emission reduction or a long-term certified emission  
20 reduction);  
21 (b) an emission reduction unit;  
22 (c) a removal unit;  
23 (d) an assigned amount unit issued in Australia;  
24 (e) a prescribed eligible carbon unit.  
25 (7) Subsection (6) has effect subject to subsection (8).  
26 (8) The regulations may provide that a specified unit is not a substitute  
27 unit for the purposes of this section.

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

Section 178

---

1     **178 Transfer of certain units instead of relinquishment of non-Kyoto**  
2             **Australian carbon credit units**

3             *Scope*

- 4             (1) This section applies if, under this Act:
- 5                 (a) a person is required to relinquish a particular number of  
6                     non-Kyoto Australian carbon credit units; or
  - 7                 (b) a particular number of non-Kyoto Australian carbon credit  
8                     units are being voluntarily relinquished by a person in order  
9                     to satisfy a condition for revocation of a section 27  
10                    declaration in relation to an offsets project; or
  - 11                (c) a particular number of non-Kyoto Australian carbon credit  
12                    units are being voluntarily relinquished by a person in order  
13                    to satisfy a condition for revocation of a subsection 97(2)  
14                    declaration.

15             *Transfer of certain units instead of relinquishment*

- 16             (2) The person may:
- 17                 (a) transfer to the Commonwealth an equal number of substitute  
18                     units; and
  - 19                 (b) by electronic notice transmitted to the Administrator, inform  
20                     the Administrator that the transfer is instead of the  
21                     relinquishment of the non-Kyoto Australian carbon credit  
22                     units.

23             Note:     For *substitute unit*, see subsection (6).

- 24             (3) A notice under subsection (2) must:
- 25                 (a) specify the substitute units that are being transferred; and
  - 26                 (b) if paragraph (1)(a) applies—specify the requirement  
27                     concerned; and
  - 28                 (c) if paragraph (1)(b) applies—a statement to the effect that the  
29                     units are being voluntarily relinquished in order to satisfy a  
30                     condition for revocation of a section 27 declaration in  
31                     relation to an offsets project; and
  - 32                 (d) if paragraph (1)(c) applies—a statement to the effect that the  
33                     units are being voluntarily relinquished in order to satisfy a  
34                     condition for revocation of a subsection 97(2) declaration.



- 1 (4) A transfer under subsection (2) must be in accordance with the  
2 regulations.

3 *Consequences of transfer*

- 4 (5) If the person transfers the substitute units specified in the notice  
5 under subsection (2), this Act (other than subsections 175(3), (4)  
6 and (5)) has effect as if the person had relinquished the non-Kyoto  
7 Australian carbon credit units:  
8 (a) if paragraph (1)(a) applies—in order to comply with the  
9 requirement mentioned in that paragraph; or  
10 (b) if paragraph (1)(b) applies—in order to satisfy a condition for  
11 revocation of a section 27 declaration in relation to an offsets  
12 project; or  
13 (c) if paragraph (1)(c) applies—in order to satisfy a condition for  
14 revocation of a subsection 97(2) declaration.

15 *Substitute unit*

- 16 (6) For the purposes of this section, each of the following is a  
17 **substitute unit**:  
18 (a) a Kyoto Australian carbon credit unit;  
19 (b) a certified emission reduction (other than a temporary  
20 certified emission reduction or a long-term certified emission  
21 reduction);  
22 (c) an emission reduction unit;  
23 (d) a removal unit;  
24 (e) an assigned amount unit issued in Australia;  
25 (f) a prescribed eligible carbon unit.  
26 (7) Subsection (6) has effect subject to subsection (8).  
27 (8) The regulations may provide that a specified unit is not a substitute  
28 unit for the purposes of this section.

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

31

1 **Division 3—Compliance with relinquishment requirements**

2 **179 Compliance with relinquishment requirements**

3 *Scope*

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

9 *No units relinquished*

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

14 
$$\frac{\text{Number of units}}{\text{required to be relinquished}} \times \text{Prescribed amount}$$

15 where:

16 ***prescribed amount*** means the greatest of the following amounts:

- 17 (a) \$20;
- 18 (b) if the Australian carbon credit units mentioned in
- 19 paragraph (1)(a) are Kyoto Australian carbon credit units—
- 20 200% of the market value of a Kyoto Australian carbon
- 21 credit unit as at the compliance deadline;
- 22 (c) if the Australian carbon credit units mentioned in
- 23 paragraph (1)(a) are non-Kyoto Australian carbon credit
- 24 units—200% of the market value of a non-Kyoto Australian
- 25 carbon credit unit as at the compliance deadline.

26 *Relinquishment of insufficient units*

- 27 (3) If, by the compliance deadline:
- 28 (a) the person has relinquished one or more Australian carbon
- 29 credit units in order to comply with the requirement; and

- 1 (b) the number of relinquished units is less than the number of  
2 units required to be relinquished;  
3 the person is liable to pay to the Commonwealth, by way of  
4 penalty, an amount worked out using the formula:

5 
$$\left( \begin{array}{c} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{c} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \text{Prescribed amount}$$

6 where:

7 **prescribed amount** means the greatest of the following amounts:

- 8 (a) \$20;  
9 (b) if the Australian carbon credit units mentioned in  
10 paragraph (1)(a) are Kyoto Australian carbon credit units—  
11 200% of the market value of a Kyoto Australian carbon  
12 credit unit as at the compliance deadline;  
13 (c) if the Australian carbon credit units mentioned in  
14 paragraph (1)(a) are non-Kyoto Australian carbon credit  
15 units—200% of the market value of a non-Kyoto Australian  
16 carbon credit unit as at the compliance deadline.

17 *When penalty becomes due and payable*

- 18 (4) An amount payable under this section is due and payable at the end  
19 of 30 days after the compliance deadline.

20 *Compliance*

- 21 (5) To avoid doubt, a person may be liable to pay a penalty under this  
22 section even if:  
23 (a) the person is not the registered holder of any Australian  
24 carbon credit units; or  
25 (b) the person is not the registered holder of the number of  
26 Australian carbon credit units required to be relinquished.

27 *Market value*

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

Section 180

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1 **180 Late payment penalty**

2 *Penalty*

- 3 (1) If an amount payable by a person under section 179 remains  
4 unpaid after the time when it became due for payment, the person  
5 is liable to pay, by way of penalty, an amount calculated at the rate  
6 of:  
7 (a) 20% per annum; or  
8 (b) if a lower rate per annum is specified in the regulations—that  
9 lower rate per annum;  
10 on the amount unpaid, computed from that time.

11 *Power to remit*

- 12 (2) The Administrator may remit the whole or a part of an amount  
13 payable under subsection (1) if:  
14 (a) the Administrator is satisfied that the person did not  
15 contribute to the delay in payment and has taken reasonable  
16 steps to mitigate the causes of the delay; or  
17 (b) the Administrator is satisfied:  
18 (i) that the person contributed to the delay but has taken  
19 reasonable steps to mitigate the causes of the delay; and  
20 (ii) having regard to the nature of the reasons that caused  
21 the delay, that it would be fair and reasonable to remit  
22 some or all of the amount; or  
23 (c) the Administrator is satisfied that there are special  
24 circumstances that make it reasonable to remit some or all of  
25 the amount.
- 26 (3) The Administrator may exercise the power conferred by  
27 subsection (2):  
28 (a) on written application being made to the Administrator by a  
29 person; or  
30 (b) on the Administrator's own initiative.

31 *Refusal*

- 32 (4) If:
-

- 1 (a) the Administrator decides to refuse to remit the whole or a  
2 part of an amount payable under subsection (1); and  
3 (b) the Administrator made the decision in response to an  
4 application;  
5 the Administrator must give written notice of the decision to the  
6 applicant.

### 7 **181 Recovery of penalties**

- 8 An amount payable under section 179 or 180:  
9 (a) is a debt due to the Commonwealth; and  
10 (b) may be recovered by the Administrator, on behalf of the  
11 Commonwealth, by action in a court of competent  
12 jurisdiction.

### 13 **182 Set-off**

- 14 If:  
15 (a) an amount (the *first amount*) is payable under section 179 or  
16 180 by a person; and  
17 (b) the following conditions are satisfied in relation to another  
18 amount (the *second amount*):  
19 (i) the amount is payable by the Commonwealth to the  
20 person;  
21 (ii) the amount is of a kind specified in the regulations;  
22 the Administrator may, on behalf of the Commonwealth, set off the  
23 whole or a part of the first amount against the whole or a part of  
24 the second amount.

### 25 **183 Refund of overpayments**

- 26 *Refund*  
27 (1) If either of the following amounts has been overpaid by a person,  
28 the amount overpaid must be refunded by the Commonwealth:  
29 (a) an amount payable under section 179;  
30 (b) an amount payable under section 180.

**Part 15** Relinquishment of Australian carbon credit units

**Division 3** Compliance with relinquishment requirements

**Section 183**

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

3 *Interest on overpayment*

4 (2) If:

5 (a) an amount overpaid by a person is refunded by the  
6 Commonwealth under subsection (1); and

7 (b) the overpayment is attributable, in whole or in part, to an  
8 error made by the Administrator;

9 interest calculated in accordance with subsection (3) is payable by  
10 the Commonwealth to the person in respect of the amount  
11 refunded.

12 (3) Interest payable to a person under subsection (2) in respect of an  
13 amount refunded to the person is to be calculated:

14 (a) in respect of the period that:

15 (i) began when the overpaid amount was paid to the  
16 Commonwealth; and

17 (ii) ended when the amount was refunded; and

18 (b) at the base interest rate (within the meaning of section 8AAD  
19 of the *Taxation Administration Act 1953*).

20 (4) The Consolidated Revenue Fund is appropriated for the purposes  
21 of making payments of interest under subsection (2).  
22

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**Part 16—Information-gathering powers****184 Simplified outline**

The following is a simplified outline of this Part:

- The Administrator may obtain information or documents.

**185 Administrator may obtain information or documents***Scope*

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

*Requirement*

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

*Compliance*

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

Section 186

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1                                    *Ancillary contraventions*

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

11                                    *Civil penalty provisions*

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

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

14    provisions.

15                                    *No limitation*

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

19                    **186 Copying documents—compensation**

20    A person is entitled to be paid by the Administrator, on behalf of

21    the Commonwealth, reasonable compensation for complying with

22    a requirement covered by paragraph 185(2)(c).

23                    **187 Copies of documents**

- 24                    (1) The Administrator may:
- 25    (a) inspect a document or copy produced under subsection
- 26    185(2); and
- 27    (b) make and retain copies of, or take and retain extracts from,
- 28    such a document.



- 1 (2) The Administrator may retain possession of a copy of a document  
2 produced in accordance with a requirement covered by paragraph  
3 185(2)(c).

#### 4 **188 Administrator may retain documents**

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

#### 17 **189 Self-incrimination**

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

**Part 16** Information-gathering powers

Section 189

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1  
2  
3  
4

(e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

1 **Part 17—Record-keeping and project monitoring**  
2 **requirements**

3 **Division 1—Introduction**

4 **190 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
- 7 • The regulations may require a person to:
    - 8 (a) make a record of information; and
    - 9 (b) retain the record.
  - 10 • A person is subject to record-keeping requirements in relation to the preparation of an offsets report.
  - 11 • A project proponent must comply with record-keeping and project monitoring requirements imposed by a methodology determination.
- 12  
13  
14

1 **Division 2—Record-keeping requirements**

2 **191 Record-keeping requirements—general**

- 3 (1) The regulations may require a person to:
- 4 (a) make a record of specified information, where the
- 5 information is relevant to this Act; and
- 6 (b) retain:
- 7 (i) the record; or
- 8 (ii) a copy of the record;
- 9 for 7 years after the making of the record.
- 10 (2) If a person is subject to a requirement under regulations made for
- 11 the purposes of subsection (1), the person must comply with that
- 12 requirement.

13 *Ancillary contraventions*

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

23 *Civil penalty provisions*

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

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

26 provisions.

27 *Other provisions do not limit this section*

- 28 (5) This section is not limited by any other provision of this Act that
- 29 relates to the keeping or retention of records.

1 **192 Record-keeping requirements—preparation of offsets report**

2 *Scope*

- 3 (1) This section applies if a person:  
4 (a) made a record of particular information; and  
5 (b) used the information to prepare an offsets report.

6 *Record-keeping requirements*

- 7 (2) The regulations may require the person to retain:  
8 (a) the record; or  
9 (b) a copy of the record;  
10 for 7 years after the offsets report was given to the Administrator.
- 11 (3) If a person is subject to a requirement under regulations made for  
12 the purposes of subsection (2), the person must comply with that  
13 requirement.

14 *Ancillary contraventions*

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

24 *Civil penalty provisions*

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

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

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1 **193 Record-keeping requirements—methodology determinations**

2 *Scope*

3 (1) This section applies if:

- 4 (a) a person is the project proponent for an eligible offsets  
5 project; and  
6 (b) under the applicable methodology determination, the person  
7 is subject to a record-keeping requirement relating to the  
8 project.

9 *Record-keeping requirement*

10 (2) The person must comply with the requirement.

11 *Ancillary contraventions*

12 (3) A person must not:

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

21 *Civil penalty provisions*

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

23 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty  
24 provisions.  
25

1 **Division 3—Project monitoring requirements**

2 **194 Project monitoring requirements—methodology determinations**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a person is the project proponent for an eligible offsets
  - 6 project; and
  - 7 (b) under the applicable methodology determination, the person
  - 8 is subject to a requirement to monitor the project.

9 *Project monitoring requirement*

- 10 (2) The person must comply with the requirement.

11 *Ancillary contraventions*

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

21 *Civil penalty provisions*

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

23 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty  
24 provisions.  
25

1 **Part 18—Monitoring powers**

2 **Division 1—Simplified outline**

3 **195 Simplified outline**

4 The following is a simplified outline of this Part:

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- 17
- An inspector may enter premises for the purpose of:
    - (a) determining whether this Act or the associated provisions have been complied with; or
    - (b) substantiating information provided under this Act or the associated provisions.
  - Entry must be with the consent of the occupier of the premises or under a monitoring warrant.
  - An inspector who enters premises may exercise monitoring powers. The inspector may be assisted by other persons if that assistance is necessary and reasonable.
  - The occupier of the premises has certain rights and responsibilities.



1 **Division 2—Appointment of inspectors and issue of**  
2 **identity cards**

3 **196 Appointment of inspectors**

- 4 (1) The Administrator may, in writing, appoint:  
5 (a) a person who:  
6 (i) is an SES employee, or acting SES employee, in the  
7 Department; or  
8 (ii) is an APS employee who holds or performs the duties of  
9 an Executive Level 1 or 2 position, or an equivalent  
10 position, in the Department; or  
11 (b) a member or special member of the Australian Federal  
12 Police;  
13 as an inspector for the purposes of this Act.
- 14 (2) The Administrator must not appoint a person as an inspector unless  
15 the Administrator is satisfied that the person has suitable  
16 qualifications and experience to properly exercise the powers of an  
17 inspector.
- 18 (3) An inspector must, in exercising powers as an inspector, comply  
19 with any directions of the Administrator.
- 20 (4) If a direction is given under subsection (3) in writing, the direction  
21 is not a legislative instrument.

22 **197 Identity cards**

- 23 (1) The Administrator must issue an identity card to an inspector.

24 *Form of identity card*

- 25 (2) The identity card must:  
26 (a) be in the form prescribed by the regulations; and  
27 (b) contain a recent photograph of the inspector.

28 *Offence*

- 29 (3) A person commits an offence if:
-

**Part 18** Monitoring powers

**Division 2** Appointment of inspectors and issue of identity cards

**Section 197**

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- 1 (a) the person has been issued with an identity card; and  
2 (b) the person ceases to be an inspector; and  
3 (c) the person does not, as soon as practicable after so ceasing,  
4 return the identity card to the Administrator.

5 Penalty: 1 penalty unit.

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

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

8 *Defence—card lost or destroyed*

- 9 (5) Subsection (3) does not apply if the identity card was lost or  
10 destroyed.

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

13 *Inspector must carry card*

- 14 (6) An inspector must carry his or her identity card at all times when  
15 exercising powers as an inspector.  
16

1 **Division 3—Powers of inspectors**

2 **Subdivision A—Monitoring powers**

3 **198 Inspector may enter premises by consent or under a warrant**

4 (1) For the purpose of:

5 (a) determining whether this Act or the associated provisions  
6 have been, or are being, complied with; or

7 (b) substantiating information provided under this Act or the  
8 associated provisions;

9 an inspector may:

10 (c) enter any premises; and

11 (d) exercise the monitoring powers set out in section 199.

12 (2) However, an inspector is not authorised to enter the premises  
13 unless:

14 (a) the occupier of the premises has consented to the entry and  
15 the inspector has shown his or her identity card if required by  
16 the occupier; or

17 (b) the entry is made under a monitoring warrant.

18 Note: If entry to the premises is with the occupier's consent, the inspector  
19 must leave the premises if the consent ceases to have effect: see  
20 section 203.

21 **199 Monitoring powers of inspectors**

22 (1) The following are the *monitoring powers* that an inspector may  
23 exercise in relation to premises under section 198:

24 (a) the power to search the premises and any thing on the  
25 premises;

26 (b) the power to examine any activity conducted on the premises;

27 (c) the power to inspect, examine, take measurements of or  
28 conduct tests on any thing on the premises;

29 (d) the power to make any still or moving image or any  
30 recording of the premises or any thing on the premises;

31 (e) the power to inspect any document on the premises;

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- 1 (f) the power to take extracts from, or make copies of, any such  
2 document;  
3 (g) the power to take onto the premises such equipment and  
4 materials as the inspector requires for the purpose of  
5 exercising powers in relation to the premises;  
6 (h) the powers set out in subsections (2), (3) and (5).

7 *Operating electronic equipment*

- 8 (2) The monitoring powers include the power to operate electronic  
9 equipment on the premises to see whether:  
10 (a) the equipment; or  
11 (b) a disk, tape or other storage device that:  
12 (i) is on the premises; and  
13 (ii) can be used with the equipment or is associated with it;  
14 contains information that is relevant to:  
15 (c) determining whether this Act or the associated provisions  
16 have been, or are being, complied with; or  
17 (d) substantiating information provided under this Act or the  
18 associated provisions.
- 19 (3) The monitoring powers include the following powers in relation to  
20 information described in subsection (2) found in the exercise of the  
21 power under that subsection:  
22 (a) the power to operate electronic equipment on the premises to  
23 put the information in documentary form and remove the  
24 documents so produced from the premises;  
25 (b) the power to operate electronic equipment on the premises to  
26 transfer the information to a disk, tape or other storage device  
27 that:  
28 (i) is brought to the premises for the exercise of the power;  
29 or  
30 (ii) is on the premises and the use of which for that purpose  
31 has been agreed in writing by the occupier of the  
32 premises;  
33 and remove the disk, tape or other storage device from the  
34 premises.

- 1 (4) An inspector may operate electronic equipment as mentioned in  
2 subsection (2) or (3) only if he or she believes on reasonable  
3 grounds that the operation of the equipment can be carried out  
4 without damage to the equipment.

5 *Securing things if entry to premises is under a monitoring warrant*

- 6 (5) If entry to the premises is under a monitoring warrant, the  
7 monitoring powers include the power to secure a thing for a period  
8 not exceeding 24 hours if:  
9 (a) the thing is found during the exercise of monitoring powers  
10 on the premises; and  
11 (b) an inspector believes on reasonable grounds that:  
12 (i) the thing affords evidence of the commission of an  
13 offence against this Act or of an offence against the  
14 *Crimes Act 1914* or the *Criminal Code* that relates to  
15 this Act; and  
16 (ii) it is necessary to secure the thing in order to prevent it  
17 from being concealed, lost or destroyed before a warrant  
18 to seize the thing is obtained; and  
19 (iii) the circumstances are serious and urgent.
- 20 (6) If an inspector believes on reasonable grounds that the thing needs  
21 to be secured for more than 24 hours, he or she may apply to a  
22 magistrate for an extension of that period.
- 23 (7) The inspector must give notice to the occupier of the premises, or  
24 another person who apparently represents the occupier, of his or  
25 her intention to apply for an extension. The occupier or other  
26 person is entitled to be heard in relation to that application.
- 27 (8) The provisions of this Part relating to the issue of monitoring  
28 warrants apply, with such modifications as are necessary, to the  
29 issue of an extension.
- 30 (9) The 24 hour period:  
31 (a) may be extended more than once; and  
32 (b) must not be extended more than 3 times.

Section 200

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1       **200 Persons assisting inspectors**

2                       *Inspectors may be assisted by other persons*

- 3               (1) An inspector may, in entering premises under section 198 and in  
4               exercising monitoring powers in relation to the premises, be  
5               assisted by other persons if that assistance is necessary and  
6               reasonable. A person giving such assistance is a **person assisting**  
7               the inspector.

8                       *Powers of a person assisting the inspector*

- 9               (2) A person assisting the inspector may:  
10              (a) enter the premises; and  
11              (b) exercise monitoring powers in relation to the premises, but  
12              only in accordance with a direction given to the person by the  
13              inspector.
- 14              (3) A power exercised by a person assisting the inspector as mentioned  
15              in subsection (2) is taken for all purposes to have been exercised by  
16              the inspector.
- 17              (4) If a direction is given under paragraph (2)(b) in writing, the  
18              direction is not a legislative instrument.

19       **Subdivision B—Powers of inspectors to ask questions and seek**  
20       **production of documents**

21       **201 Inspector may ask questions and seek production of documents**

22                       *Entry with consent*

- 23              (1) If an inspector is authorised to enter premises because the occupier  
24              of the premises consented to the entry, the inspector may ask the  
25              occupier to:  
26              (a) answer any questions relating to the operation of this Act or  
27              the associated provisions that are put by the inspector; and  
28              (b) produce any document relating to the operation of this Act or  
29              the associated provisions that is requested by the inspector.

1 *Entry under a monitoring warrant*

- 2 (2) If an inspector is authorised to enter premises by a monitoring  
3 warrant, the inspector may require any person on the premises to:  
4 (a) answer any questions relating to the operation of this Act or  
5 the associated provisions that are put by the inspector; and  
6 (b) produce any document relating to the operation of this Act or  
7 the associated provisions that is requested by the inspector.

8 *Offence*

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

13 Penalty: 30 penalty units.

14 **202 Self-incrimination**

- 15 (1) A person is not excused from giving an answer or producing a  
16 document under section 201 on the ground that the answer or the  
17 production of the document might tend to incriminate the person or  
18 expose the person to a penalty.
- 19 (2) However, in the case of an individual:
- 20 (a) the answer given or the document produced; or  
21 (b) giving the answer or producing the document; or  
22 (c) any information, document or thing obtained as a direct or  
23 indirect consequence of giving the answer or producing the  
24 document;
- 25 is not admissible in evidence against the individual:
- 26 (d) in civil proceedings for the recovery of a penalty (other than  
27 proceedings for the recovery of a penalty under section 179  
28 or 180); or  
29 (e) in criminal proceedings (other than proceedings for an  
30 offence against section 137.1 or 137.2 of the *Criminal Code*  
31 that relates to this Part).  
32

1       **Division 4—Obligations and incidental powers of**  
2                               **inspectors**

3       **203 Consent**

- 4                               (1) An inspector must, before obtaining the consent of an occupier of  
5                               premises for the purposes of paragraph 198(2)(a), inform the  
6                               occupier that the occupier may refuse consent.
- 7                               (2) A consent has no effect unless the consent is voluntary.
- 8                               (3) A consent may be expressed to be limited to entry during a  
9                               particular period. If so, the consent has effect for that period unless  
10                              the consent is withdrawn before the end of that period.
- 11                             (4) A consent that is not limited as mentioned in subsection (3) has  
12                             effect until the consent is withdrawn.
- 13                             (5) If an inspector entered premises because of the consent of the  
14                             occupier of the premises, the inspector, and any person assisting  
15                             the inspector, must leave the premises if the consent ceases to have  
16                             effect.

17       **204 Announcement before entry under warrant**

- 18                             An inspector must, before entering premises under a monitoring  
19                             warrant:
- 20                             (a) announce that he or she is authorised to enter the premises;  
21                             and
- 22                             (b) show his or her identity card to the occupier of the premises,  
23                             or to another person who apparently represents the occupier,  
24                             if the occupier or other person is present at the premises; and
- 25                             (c) give any person at the premises an opportunity to allow entry  
26                             to the premises.

27       **205 Inspector to be in possession of warrant**

28                             If a monitoring warrant is being executed in relation to premises,  
29                             an inspector executing the warrant must be in possession of the  
30                             warrant or a copy of the warrant.



1 **206 Details of warrant etc. to be given to occupier**

2 If:

- 3 (a) a monitoring warrant is being executed in relation to  
4 premises; and  
5 (b) the occupier of the premises, or another person who  
6 apparently represents the occupier, is present at the premises;  
7 an inspector executing the warrant must, as soon as practicable:  
8 (c) make a copy of the warrant available to the occupier or other  
9 person (which need not include the signature of the  
10 magistrate who issued it); and  
11 (d) inform the occupier or other person of the rights and  
12 responsibilities of the occupier or other person under  
13 Division 5.

14 **207 Expert assistance to operate electronic equipment**

- 15 (1) This section applies to premises to which a monitoring warrant  
16 relates.

17 *Securing equipment*

- 18 (2) If an inspector believes on reasonable grounds that:  
19 (a) there is on the premises information that is relevant to:  
20 (i) determining whether this Act or the associated  
21 provisions have been, or are being, complied with; or  
22 (ii) substantiating information provided under this Act or  
23 the associated provisions;  
24 and that may be accessible by operating electronic equipment  
25 on the premises; and  
26 (b) expert assistance is required to operate the equipment; and  
27 (c) if he or she does not take action under this subsection, the  
28 information may be destroyed, altered or otherwise interfered  
29 with;  
30 he or she may do whatever is necessary to secure the equipment,  
31 whether by locking it up, placing a guard or other means.
- 32 (3) The inspector must give notice to the occupier of the premises, or  
33 another person who apparently represents the occupier, of his or

**Part 18** Monitoring powers

**Division 4** Obligations and incidental powers of inspectors

**Section 208**

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1 her intention to secure the equipment and of the fact that the  
2 equipment may be secured for up to 24 hours.

3 *Period equipment may be secured*

- 4 (4) The equipment may be secured:  
5 (a) until the 24 hour period ends; or  
6 (b) until the equipment has been operated by the expert;  
7 whichever happens first.

8 *Extensions*

- 9 (5) If an inspector believes on reasonable grounds that the equipment  
10 needs to be secured for more than 24 hours, he or she may apply to  
11 a magistrate for an extension of that period.
- 12 (6) The inspector must give notice to the occupier of the premises, or  
13 another person who apparently represents the occupier, of his or  
14 her intention to apply for an extension. The occupier or other  
15 person is entitled to be heard in relation to that application.
- 16 (7) The provisions of this Part relating to the issue of monitoring  
17 warrants apply, with such modifications as are necessary, to the  
18 issue of an extension.
- 19 (8) The 24 hour period:  
20 (a) may be extended more than once; and  
21 (b) must not be extended more than 3 times.

22 **208 Compensation for damage to electronic equipment**

- 23 (1) This section applies if:  
24 (a) as a result of electronic equipment being operated as  
25 mentioned in this Part:  
26 (i) damage is caused to the equipment; or  
27 (ii) the data recorded on the equipment is damaged; or  
28 (iii) programs associated with the use of the equipment, or  
29 with the use of the data, are damaged or corrupted; and  
30 (b) the damage or corruption occurs because:

- 1 (i) insufficient care was exercised in selecting the person  
2 who was to operate the equipment; or  
3 (ii) insufficient care was exercised by the person operating  
4 the equipment.
- 5 (2) The Commonwealth must pay the owner of the equipment, or the  
6 user of the data or programs, such reasonable compensation for the  
7 damage or corruption as the Commonwealth and the owner or user  
8 agree on.
- 9 (3) However, if the owner or user and the Commonwealth fail to  
10 agree, the owner or user may institute proceedings in the Federal  
11 Court for such reasonable amount of compensation as the Court  
12 determines.
- 13 (4) In determining the amount of compensation payable, regard is to  
14 be had to whether the occupier of the premises, or the occupier's  
15 employees and agents, if they were available at the time, provided  
16 any appropriate warning or guidance on the operation of the  
17 equipment.
- 18 (5) In this section:  
19 *damage*, in relation to data, includes damage by erasure of data or  
20 addition of other data.  
21

Section 209

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1 **Division 5—Occupier's rights and responsibilities**

2 **209 Occupier entitled to observe execution of warrant**

- 3 (1) If:
- 4 (a) a monitoring warrant is being executed in relation to
- 5 premises; and
- 6 (b) the occupier of the premises, or another person who
- 7 apparently represents the occupier, is present at the premises;
- 8 the occupier or other person is entitled to observe the execution of
- 9 the warrant.
- 10 (2) The right to observe the execution of the warrant ceases if the
- 11 occupier or other person impedes that execution.
- 12 (3) This section does not prevent the execution of the warrant in 2 or
- 13 more areas of the premises at the same time.

14 **210 Occupier to provide inspector with facilities and assistance**

- 15 (1) The occupier of premises to which a monitoring warrant relates, or
- 16 another person who apparently represents the occupier, must
- 17 provide:
- 18 (a) an inspector executing the warrant; and
- 19 (b) any person assisting the inspector;
- 20 with all reasonable facilities and assistance for the effective
- 21 exercise of their powers.
- 22 (2) A person commits an offence if:
- 23 (a) the person is subject to subsection (1); and
- 24 (b) the person fails to comply with that subsection.
- 25 Penalty: 30 penalty units.
- 26

1 **Division 6—Monitoring warrants**

2 **211 Monitoring warrants**

3 *Application for warrant*

- 4 (1) An inspector may apply to a magistrate for a warrant under this  
5 section in relation to premises.

6 *Issue of warrant*

- 7 (2) The magistrate may issue the warrant if the magistrate is satisfied,  
8 by information on oath or affirmation, that it is reasonably  
9 necessary that one or more inspectors should have access to the  
10 premises for the purpose of:

- 11 (a) determining whether this Act or the associated provisions  
12 have been, or are being, complied with; or  
13 (b) substantiating information provided under this Act or the  
14 associated provisions.

- 15 (3) However, the magistrate must not issue the warrant unless the  
16 inspector or some other person has given to the magistrate, either  
17 orally or by affidavit, such further information (if any) as the  
18 magistrate requires concerning the grounds on which the issue of  
19 the warrant is being sought.

20 *Content of warrant*

- 21 (4) The warrant must:  
22 (a) describe the premises to which the warrant relates; and  
23 (b) state that the warrant is issued under this section; and  
24 (c) state that the warrant is issued for the purpose of:  
25 (i) determining whether this Act or the associated  
26 provisions have been, or are being, complied with; or  
27 (ii) substantiating information provided under this Act or  
28 the associated provisions; and  
29 (d) authorise one or more inspectors (whether or not named in  
30 the warrant) from time to time while the warrant remains in  
31 force:

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**Division 6** Monitoring warrants

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- 1 (i) to enter the premises; and  
2 (ii) to exercise the powers set out in Divisions 3 and 4 in  
3 relation to the premises; and  
4 (e) state whether the entry is authorised to be made at any time  
5 of the day or during specified hours of the day; and  
6 (f) specify the day (not more than 6 months after the issue of the  
7 warrant) on which the warrant ceases to be in force.  
8

1 **Division 7—Powers of magistrates**

2 **212 Powers of magistrates**

3 *Powers conferred personally*

4 (1) A power conferred on a magistrate by this Part is conferred on the  
5 magistrate:

- 6 (a) in a personal capacity; and  
7 (b) not as a court or a member of a court.

8 *Powers need not be accepted*

9 (2) The magistrate need not accept the power conferred.

10 *Protection and immunity*

11 (3) A magistrate exercising a power conferred by this Part has the  
12 same protection and immunity as if he or she were exercising the  
13 power:

- 14 (a) as the court of which the magistrate is a member; or  
15 (b) as a member of the court of which the magistrate is a  
16 member.  
17

1 **Part 19—Audits**

2 **Division 1—Introduction**

3 **213 Simplified outline**

4 The following is a simplified outline of this Part:

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|---|
| <ul style="list-style-type: none"><li>• The Administrator may require audits of one or more aspects of a person's compliance with this Act and the regulations to be carried out.</li></ul> |
|---|



1 **Division 2—Audits**

2 **214 Compliance audits**

3 *Scope*

- 4 (1) This section applies if:
- 5 (a) a person is, or has been, the project proponent for an eligible
  - 6 offsets project; and
  - 7 (b) the Administrator has reasonable grounds to suspect that the
  - 8 person has contravened, is contravening, or is proposing to
  - 9 contravene, this Act or the associated provisions.

10 *Audit*

- 11 (2) The Administrator may, by written notice given to the person,
- 12 require the person to:
- 13 (a) appoint as an audit team leader:
    - 14 (i) a registered greenhouse and energy auditor of the
    - 15 person's choice; or
    - 16 (ii) if the Administrator specifies a registered greenhouse
    - 17 and energy auditor in the notice—that auditor; or
    - 18 (iii) if the Administrator specifies more than one registered
    - 19 greenhouse and energy auditor in the notice—any one
    - 20 of those auditors; and
  - 21 (b) arrange for the audit team leader to carry out an audit on one
  - 22 or more aspects of the person's compliance with this Act or
  - 23 the associated provisions; and
  - 24 (c) arrange for the audit team leader to give the person a written
  - 25 report setting out the results of the audit; and
  - 26 (d) give the Administrator a copy of the audit report on or before
  - 27 the day specified in the notice.

28 Note: For the conduct of an audit under this section, see section 75AA of the  
29 *National Greenhouse and Energy Reporting Act 2007*.

- 30 (3) The notice must specify:
- 31 (a) the type of audit to be carried out; and
  - 32 (b) the matters to be covered by the audit; and

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1 (c) the form of the audit report and the kinds of details it is to  
2 contain.

3 (4) A person must provide the audit team leader, and any persons  
4 assisting the audit team leader, with all reasonable facilities and  
5 assistance necessary for the effective exercise of the audit team  
6 leader's duties under this Act.

7 (5) If the Administrator gives a person written notice under  
8 subsection (2), the person must comply with the requirements of  
9 the notice.

10 *Ancillary contraventions*

11 (6) A person must not:

12 (a) aid, abet, counsel or procure a contravention of subsection (4)  
13 or (5); or

14 (b) induce, whether by threats or promises or otherwise, a  
15 contravention of subsection (4) or (5); or

16 (c) be in any way, directly or indirectly, knowingly concerned in,  
17 or party to, a contravention of subsection (4) or (5); or

18 (d) conspire with others to effect a contravention of  
19 subsection (4) or (5).

20 *Civil penalty provisions*

21 (7) Subsections (4), (5) and (6) are ***civil penalty provisions***.

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

24 *Reimbursement*

25 (8) If:

26 (a) the Administrator gives a person a notice under  
27 subsection (2); and

28 (b) in complying with that notice, the person arranges for an  
29 audit team leader to carry out an audit on one or more aspects  
30 of the person's compliance with this Act or the associated  
31 provisions; and

- 1 (c) the audit report does not indicate that there is evidence of  
2 non-compliance by the person with this Act or the associated  
3 provisions; and  
4 (d) the person requests the Administrator to reimburse the person  
5 for reasonable costs incurred by the person in complying with  
6 the notice; and  
7 (e) the Administrator is satisfied that the person would suffer  
8 financial hardship if the person were not reimbursed for those  
9 costs;  
10 the Administrator may, on behalf of the Commonwealth, reimburse  
11 the person for those costs.
- 12 (9) A request under paragraph (8)(d) must:  
13 (a) be in writing; and  
14 (b) be in a form approved, in writing, by the Administrator; and  
15 (c) be accompanied by such information as is specified in the  
16 regulations; and  
17 (d) be accompanied by such documents (if any) as are specified  
18 in the regulations.
- 19 (10) The approved form of request may provide for verification by  
20 statutory declaration of statements in requests.

## 21 **215 Other audits**

### 22 *Audit*

- 23 (1) If a person is, or has been, the project proponent for an eligible  
24 offsets project, the Administrator may appoint a registered  
25 greenhouse and energy auditor as an audit team leader to carry out  
26 an audit of the person's compliance with one or more aspects of  
27 this Act or the associated provisions.
- 28 (2) The Administrator must give written notice to the person of a  
29 decision to appoint an audit team leader under subsection (1). The  
30 notice must:  
31 (a) specify the audit team leader; and  
32 (b) specify the period within which the audit is to be undertaken;  
33 and

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- 1 (c) specify the type of audit to be carried out; and  
2 (d) specify the matters to be covered by the audit; and  
3 (e) be given to the person at a reasonable time before the audit is  
4 to be undertaken.

5 Note: For the conduct of an audit under this section, see section 75AA of the  
6 *National Greenhouse and Energy Reporting Act 2007*.

- 7 (3) The person must provide the audit team leader, and any persons  
8 assisting the audit team leader, with all reasonable facilities and  
9 assistance necessary for the effective exercise of the audit team  
10 leader's duties under this Act.

11 *Ancillary contraventions*

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

21 *Civil penalty provisions*

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

23 Note: Part 21 provides for pecuniary penalties for breaches of civil penalty  
24 provisions.  
25

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## 1 **Part 20—Liability of executive officers of bodies** 2 **corporate** 3

### 4 **216 Simplified outline**

5 The following is a simplified outline of this Part:

- |   |
|---|
| <ul style="list-style-type: none"><li>6 • If a body corporate contravenes a civil penalty provision, and<br/>7 an executive officer of the body corporate was involved in the<br/>8 contravention, the officer will contravene a civil penalty<br/>9 provision.</li></ul> |
|---|

### 10 **217 Civil penalties for executive officers of bodies corporate**

11 (1) If:

- 12 (a) a body corporate contravenes a civil penalty provision; and  
13 (b) an executive officer of the body corporate knew that, or was  
14 reckless or negligent as to whether, the contravention would  
15 occur; and  
16 (c) the officer was in a position to influence the conduct of the  
17 body corporate in relation to the contravention; and  
18 (d) the officer failed to take all reasonable steps to prevent the  
19 contravention;

20 the officer contravenes this subsection.

21 (2) For the purposes of subsection (1), the officer is *reckless* as to  
22 whether the contravention would occur if:

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

27 (3) For the purposes of subsection (1), the officer is *negligent* as to  
28 whether the contravention would occur if the officer's conduct  
29 involves:

- 30 (a) such a great falling short of the standard of care that a  
31 reasonable person would exercise in the circumstances; and

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- 1 (b) such a high risk that the contravention would occur;  
2 that the conduct merits the imposition of a pecuniary penalty.

3 *Civil penalty provision*

- 4 (4) Subsection (1) is a *civil penalty provision*.

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

7 **218 Reasonable steps to prevent contravention**

- 8 (1) For the purposes of section 217, in determining whether an  
9 executive officer of a body corporate failed to take all reasonable  
10 steps to prevent a contravention, a court may have regard to all  
11 relevant matters, including:  
12 (a) what action (if any) the officer took directed towards  
13 ensuring the following (to the extent that the action is  
14 relevant to the contravention):  
15 (i) that the body corporate arranges regular professional  
16 assessments of the body corporate's compliance with  
17 civil penalty provisions;  
18 (ii) that the body corporate implements any appropriate  
19 recommendations arising from such an assessment;  
20 (iii) that the body corporate's employees, agents and  
21 contractors have a reasonable knowledge and  
22 understanding of the requirements to comply with civil  
23 penalty provisions in so far as those requirements affect  
24 the employees, agents or contractors concerned; and  
25 (b) what action (if any) the officer took when he or she became  
26 aware of the contravention.  
27 (2) This section does not limit section 217.  
28

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## 1 **Part 21—Civil penalty orders**

### 3 **219 Simplified outline**

4 The following is a simplified outline of this Part:

- |  |
|--|
| <p>5 • Pecuniary penalties are payable for contraventions of civil<br/>6 penalty provisions.</p> |
|--|

### 7 **220 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 **221 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 10,000 penalty units for each  
12 contravention.
- 13 (5) The pecuniary penalty payable under subsection (1) by a person  
14 other than a body corporate must not exceed 2,000 penalty units for  
15 each contravention.

16 *Civil enforcement of penalty*

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

22 **222 Who may apply for a civil penalty order**

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

26 **223 Two or more proceedings may be heard together**

- 27 The Court may direct that 2 or more proceedings for civil penalty  
28 orders are to be heard together.



1     **224 Time limit for application for an order**

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

4     **225 Civil evidence and procedure rules for civil penalty orders**

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

7     **226 Civil proceedings after criminal proceedings**

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

12    **227 Criminal proceedings during civil proceedings**

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

22    **228 Criminal proceedings after civil proceedings**

23                    Criminal proceedings may be started against a person for conduct  
24                    that is substantially the same as conduct constituting a  
25                    contravention of a civil penalty provision regardless of whether a  
26                    civil penalty order has been made against the person.

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1     **229 Evidence given in proceedings for a civil penalty order not**  
2     **admissible in criminal proceedings**

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

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

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

16     **230 Mistake of fact**

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

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

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

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

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

#### 4 **231 State of mind**

##### 5 *Scope*

- 6 (1) This section applies to proceedings for a civil penalty order against  
7 a person for a contravention of any of the following civil penalty  
8 provisions:
- 9 (a) subsection 76(1);
  - 10 (b) subsection 78(2);
  - 11 (c) subsection 79(2);
  - 12 (d) subsection 80(2);
  - 13 (e) subsection 81(2);
  - 14 (f) subsection 82(2);
  - 15 (g) subsection 82(3);
  - 16 (h) subsection 83(2);
  - 17 (i) subsection 84(2);
  - 18 (j) subsection 85(5);
  - 19 (k) subsection 97(9);
  - 20 (l) subsection 97(10);
  - 21 (m) subsection 185(4);
  - 22 (n) subsection 191(2);
  - 23 (o) subsection 192(3);
  - 24 (p) subsection 193(2);
  - 25 (q) subsection 194(2);
  - 26 (r) subsection 214(4);
  - 27 (s) subsection 214(5);
  - 28 (t) subsection 215(3).

##### 29 *State of mind*

- 30 (2) In the proceedings, it is not necessary to prove:
- 31 (a) the person's intention; or
  - 32 (b) the person's knowledge; or

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- 1 (c) the person's recklessness; or  
2 (d) the person's negligence; or  
3 (e) any other state of mind of the person.

4 (3) Subsection (2) does not affect the operation of section 230.

5 **232 Continuing contraventions**

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

11 (2) A person who contravenes any of the following civil remedy  
12 provisions:

- 13 (a) subsection 76(1);  
14 (b) subsection 78(2);  
15 (c) subsection 79(2);  
16 (d) subsection 80(2);  
17 (e) subsection 81(2);  
18 (f) subsection 82(2);  
19 (g) subsection 82(3);  
20 (h) subsection 83(2);  
21 (i) subsection 84(2);  
22 (j) subsection 85(5);  
23 (k) subsection 185(4);  
24 (l) subsection 193(2);  
25 (m) subsection 194(2);  
26 (n) subsection 214(4);  
27 (o) subsection 214(5);

28 commits a separate contravention of that provision in respect of  
29 each day (including a day of the making of a relevant civil penalty  
30 order or any subsequent day) during which the contravention  
31 continues.

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- (3) The pecuniary penalty payable under subsection 221(1) for such a separate contravention in respect of a particular day must not exceed:
- (a) in the case of a contravention of subsection 185(4)—10% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted; or
  - (b) otherwise—5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted.

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1 **Part 22—Offences relating to administrative**  
2 **penalties**  
3

4 **233 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
- A person must not enter into a scheme:
    - 7 (a) with the intention, knowledge or belief that the  
8 scheme will secure or achieve the result that a  
9 body corporate or trust will be unable to pay an  
10 administrative penalty payable under this Act; or
    - 11 (b) if it would be reasonable to conclude that the  
12 person entered into the scheme for the sole or  
13 dominant purpose of securing or achieving the  
14 result that a body corporate or trust will be unable  
15 to pay an administrative penalty payable under this  
16 Act.

17 **234 Scheme to avoid existing liability to pay administrative penalty**

18 *Intention*

- 19 (1) A person commits an offence if:  
20 (a) a penalty is due and payable by a body corporate or trust  
21 under section 179; and  
22 (b) at or after the time when the penalty became due and  
23 payable, the person entered into a scheme; and  
24 (c) the person entered into the scheme with the intention of  
25 securing or achieving the result, either generally or for a  
26 limited period, that the body corporate or trust:  
27 (i) will be unable; or  
28 (ii) will be likely to be unable; or  
29 (iii) will continue to be unable; or  
30 (iv) will be likely to continue to be unable;

1                                   having regard to the other debts of the body corporate or  
2                                   trust, to pay the penalty.

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

4                                   (2) For the purposes of subsection (1), it is immaterial whether the  
5                                   body corporate or the trustee of the trust is:

- 6                                   (a) the person mentioned in subsection (1); or  
7                                   (b) a party to the scheme.

8                                   *Knowledge or belief*

9                                   (3) A person commits an offence if:

- 10                                  (a) a penalty is due and payable by a body corporate or trust  
11                                   under section 179; and  
12                                  (b) at or after the time when the penalty became due and  
13                                   payable, the person entered into a scheme; and  
14                                  (c) the person entered into the scheme with the knowledge or  
15                                   belief that the scheme will, or will be likely to, secure or  
16                                   achieve the result, either generally or for a limited period,  
17                                   that the body corporate or trust:  
18                                   (i) will be unable; or  
19                                   (ii) will be likely to be unable; or  
20                                   (iii) will continue to be unable; or  
21                                   (iv) will be likely to continue to be unable;  
22                                   having regard to the other debts of the body corporate or  
23                                   trust, to pay the penalty.

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

25                                  (4) For the purposes of subsection (3), it is immaterial whether the  
26                                  body corporate or the trustee of the trust is:

- 27                                  (a) the person mentioned in subsection (3); or  
28                                  (b) a party to the scheme.

29                                  *Objective purpose*

30                                  (5) A person (the **first person**) commits an offence if:

- 31                                  (a) a penalty is due and payable by a body corporate or trust  
32                                   under section 179; and

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- 1 (b) at or after the time when the penalty became due and  
2 payable, the first person entered into a scheme; and  
3 (c) having regard to:  
4 (i) the manner in which the scheme was entered into; and  
5 (ii) the form and substance of the scheme, including any  
6 legal rights and obligations involved in the scheme and  
7 the economic and commercial substance of the scheme;  
8 and  
9 (iii) the timing of the scheme;  
10 it would be reasonable to conclude that the first person  
11 entered into the scheme for the sole or dominant purpose of  
12 securing or achieving the result, either generally or for a  
13 limited period, that the body corporate or trust:  
14 (iv) will be unable; or  
15 (v) will be likely to be unable; or  
16 (vi) will continue to be unable; or  
17 (vii) will be likely to continue to be unable;  
18 to pay the penalty.

19 Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- 20 (6) For the purposes of subsection (5), it is immaterial whether the  
21 body corporate or the trustee of the trust is:  
22 (a) the first person; or  
23 (b) a party to the scheme.

24 **235 Scheme to avoid future liability to pay administrative penalty**

25 *Intention*

- 26 (1) A person commits an offence if:  
27 (a) a penalty is due and payable by a body corporate or trust  
28 under section 179; and  
29 (b) before the penalty became due and payable, the person  
30 entered into a scheme; and  
31 (c) the person entered into the scheme with the intention of  
32 securing or achieving the result, either generally or for a  
33 limited period, that, in the event that the body corporate or



1 trust were to become liable to pay the penalty, the body  
 2 corporate or trust:  
 3 (i) will be unable; or  
 4 (ii) will be likely to be unable; or  
 5 (iii) will continue to be unable; or  
 6 (iv) will be likely to continue to be unable;  
 7 having regard to the other debts of the body corporate or  
 8 trust, to pay the penalty.

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

- 10 (2) For the purposes of subsection (1), it is immaterial whether the  
 11 body corporate or the trustee of the trust is:  
 12 (a) the person mentioned in subsection (1); or  
 13 (b) a party to the scheme.

14 *Knowledge or belief*

- 15 (3) A person commits an offence if:  
 16 (a) a penalty is due and payable by a body corporate or trust  
 17 under section 179; and  
 18 (b) before the penalty became due and payable, the person  
 19 entered into a scheme; and  
 20 (c) the person entered into the scheme with the knowledge or  
 21 belief that the scheme will, or will be likely to, secure or  
 22 achieve the result, either generally or for a limited period,  
 23 that, in the event that the body corporate or trust were to  
 24 become liable to pay the penalty, the body corporate or trust:  
 25 (i) will be unable; or  
 26 (ii) will be likely to be unable; or  
 27 (iii) will continue to be unable; or  
 28 (iv) will be likely to continue to be unable;  
 29 having regard to the other debts of the body corporate or  
 30 trust, to pay the penalty.

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

- 32 (4) For the purposes of subsection (3), it is immaterial whether the  
 33 body corporate or the trustee of the trust is:

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- 1 (a) the person mentioned in subsection (3); or  
2 (b) a party to the scheme.

3 *Objective purpose*

- 4 (5) A person (the *first person*) commits an offence if:  
5 (a) a penalty is due and payable by a body corporate or trust  
6 under section 179; and  
7 (b) before the penalty became due and payable, the first person  
8 entered into a scheme; and  
9 (c) having regard to:  
10 (i) the manner in which the scheme was entered into; and  
11 (ii) the form and substance of the scheme, including any  
12 legal rights and obligations involved in the scheme and  
13 the economic and commercial substance of the scheme;  
14 and  
15 (iii) the timing of the scheme;  
16 it would be reasonable to conclude that the first person  
17 entered into the scheme for the sole or dominant purpose of  
18 securing or achieving the result, either generally or for a  
19 limited period, that, in the event that the body corporate or  
20 trust were to become liable to pay the penalty, the body  
21 corporate or trust:  
22 (iv) will be unable; or  
23 (v) will be likely to be unable; or  
24 (vi) will continue to be unable; or  
25 (vii) will be likely to continue to be unable;  
26 to pay the penalty.

27 Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- 28 (6) For the purposes of subsection (5), it is immaterial whether the  
29 body corporate or the trustee of the trust is:  
30 (a) the first person; or  
31 (b) a party to the scheme.  
32

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**Part 23—Enforceable undertakings****236 Simplified outline**

The following is a simplified outline of this Part:

- A person may give the Administrator an enforceable undertaking about compliance with this Act or the associated provisions.

**237 Acceptance of undertakings**

- (1) The Administrator may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act or the associated provisions, or is unlikely to contravene this Act or the associated provisions, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Administrator.
- (4) The Administrator may, by written notice given to the person, cancel the undertaking.
- (5) The Administrator must publish the undertaking on the Administrator's website.

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1       **238 Enforcement of undertakings**

2               (1) If:

- 3                     (a) a person has given an undertaking under section 237; and  
4                     (b) the undertaking has not been withdrawn or cancelled; and  
5                     (c) the Administrator considers that the person has breached the  
6                         undertaking;

7               the Administrator may apply to the Federal Court for an order  
8               under subsection (2) of this section.

9               (2) If the Federal Court is satisfied that the person has breached the  
10              undertaking, the court may make any or all of the following orders:

- 11                   (a) an order directing the person to comply with the undertaking;  
12                   (b) an order directing the person to pay to the Administrator, on  
13                       behalf of the Commonwealth, an amount up to the amount of  
14                       any financial benefit that the person has obtained directly or  
15                       indirectly and that is reasonably attributable to the breach;  
16                   (c) any order that the court considers appropriate directing the  
17                       person to compensate any other person who has suffered loss  
18                       or damage as a result of the breach;  
19                   (d) any other order that the court considers appropriate.  
20

1 **Part 24—Review of decisions**

2 **Division 1—Introduction**

3 **239 Simplified outline**

4 The following is a simplified outline of this Part:

- 5
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- 12
- 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.
  - Certain decisions of the Domestic Offsets Integrity Committee may be reviewed by the Administrative Appeals Tribunal.

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1 **Division 2—Decisions of the Administrator**

2 **240 Reviewable decisions**

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

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<b>Reviewable decisions</b>	
<b>Item</b>	<b>Decision</b>
1	A decision to refuse to issue a certificate of entitlement under section 15.
2	A decision under subsection 15(3) to state that a specified number is the unit entitlement in respect of a certificate of entitlement.
3	A decision to refuse to declare that an offsets project is an eligible offsets project under section 27.
4	A decision, under regulations made for the purposes of subsection 29(1), to vary an eligible offsets project declaration.
5	A decision, under regulations made for the purposes of any of the following provisions, to refuse to vary an eligible offsets project declaration: (a) subsection 29(1); (b) subsection 30(1); (c) subsection 31(2).
6	A decision, under regulations made for the purposes of any of the following provisions, to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1); (c) subsection 34(1); (d) subsection 35(1); (e) subsection 36(1); (f) subsection 37(1); (g) subsection 38(1); (h) subsection 139(1).
7	A decision, under regulations made for the purposes of either of the following provisions, to refuse to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1).

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**Reviewable decisions**

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<b>Item</b>	<b>Decision</b>
8	A decision to make a determination under section 57 or 58.
9	A decision to refuse to recognise a person as a recognised offsets entity under section 64.
10	A decision under section 65 to cancel a person's recognition as a recognised offsets entity.
11	A decision under section 74 to determine a subsequent crediting period for an eligible offsets project.
12	A decision under section 74 to refuse to determine a subsequent crediting period for an eligible offsets project.
13	A decision under section 88, 89, 90 or 91 to require a person to relinquish a specified number of Australian carbon credit units.
14	A decision to refuse to make a determination under section 95.
15	A decision to make a declaration under subsection 97(2).
16	A decision under section 98 to vary a carbon maintenance obligation declaration.
17	A decision under section 98 to refuse to vary a carbon maintenance obligation declaration.
18	A decision under section 99 to refuse to revoke a carbon maintenance obligation declaration.
19	A decision under section 130 to refuse to approve the application of a methodology determination to an eligible offsets project.
20	A decision to refuse to extend a period under subsection 153(5).
21	A decision under section 169 to refuse a request not to set out the project area or project areas for an eligible offsets project in the Register of Offsets Projects.
22	A decision to refuse to remit the whole or a part of an amount under subsection 180(2).

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1 **241 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.

**Part 24** Review of decisions

**Division 2** Decisions of the Administrator

**Section 242**

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- 1                                    *Application*
- 2                                    (2) A person affected by a reviewable decision who is dissatisfied with
- 3                                    the decision may apply to the Administrator for the Administrator
- 4                                    to reconsider the decision.
- 5                                    (3) The application must:
- 6                                    (a) be in a form approved in writing by the Administrator; and
- 7                                    (b) set out the reasons for the application; and
- 8                                    (c) be accompanied by the fee (if any) specified in the
- 9                                    regulations.
- 10                                   (4) The application must be made within:
- 11                                   (a) 28 days after the applicant is informed of the decision; or
- 12                                   (b) if, either before or after the end of that period of 28 days, the
- 13                                   Administrator extends the period within which the
- 14                                   application may be made—the extended period.
- 15                                   (5) An approved form of an application may provide for verification
- 16                                   by statutory declaration of statements in applications.
- 17                                   (6) A fee specified under paragraph (3)(c) must not be such as to
- 18                                   amount to taxation.

**242 Reconsideration by the Administrator**

- 19
- 20                                   (1) Upon receiving such an application, the Administrator must:
- 21                                   (a) reconsider the decision; and
- 22                                   (b) affirm, vary or revoke the decision.
- 23                                   (2) The Administrator's decision on reconsideration of a decision has
- 24                                   effect as if it had been made under the provision under which the
- 25                                   original decision was made.
- 26                                   (3) The Administrator must give to the applicant a written notice
- 27                                   stating the Administrator's decision on the reconsideration.
- 28                                   (4) Within 28 days after making the decision on the reconsideration,
- 29                                   the Administrator must give the applicant a written statement of the
- 30                                   Administrator's reasons for the decision.



1     **243 Deadline for reconsideration**

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

9     **244 Review by the Administrative Appeals Tribunal**

- 10            (1) Applications may be made to the Administrative Appeals Tribunal  
11               to review a reviewable decision if the Administrator has affirmed  
12               or varied the decision under section 242.
- 13            (2) Applications may be made to the Administrative Appeals Tribunal  
14               to review a reviewable decision if the decision was not made by a  
15               delegate of the Administrator.

16     **245 Stay of proceedings for the recovery of an administrative  
17            penalty**

18            *Scope*

- 19            (1) This section applies if:
- 20               (a) a notice was given under section 88, 89, 90 or 91 in relation  
21                 to a project that is or was an eligible offsets project; and  
22               (b) the notice required a person to relinquish a particular number  
23                 of Australian carbon credit units; and  
24               (c) the person did not comply with the requirement within 90  
25                 days after the notice was given; and  
26               (d) proceedings for the recovery of the penalty payable under  
27                 section 179 in respect of the non-compliance with the  
28                 requirement (including any late payment penalty payable  
29                 under section 180 in relation to the section 179 penalty) are  
30                 before a court; and  
31               (e) any of the following subparagraphs applies:

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- 1 (i) the decision to require the person to relinquish a  
2 specified number of Australian carbon credit units is  
3 being reconsidered by the Administrator under  
4 section 242;
- 5 (ii) the decision to require the person to relinquish a  
6 specified number of Australian carbon credit units has  
7 been affirmed or varied by the Administrator under  
8 section 242, and the decision as so affirmed or varied is  
9 the subject of an application for review by the  
10 Administrative Appeals Tribunal;
- 11 (iii) the decision to require the person to relinquish a  
12 specified number of Australian carbon credit units is the  
13 subject of an application for review by the  
14 Administrative Appeals Tribunal.

15 *Stay of proceedings*

- 16 (2) The court may stay the proceedings until:
- 17 (a) if subparagraph (1)(e)(i) applies—the Administrator notifies  
18 the applicant for reconsideration of the Administrator’s  
19 decision on the reconsideration; or
- 20 (b) if subparagraph (1)(e)(ii) or (iii) applies—the review by the  
21 Administrative Appeals Tribunal (including any court  
22 proceedings arising out of the review) has been finalised.
- 23 (3) This section does not limit the power of:
- 24 (a) a court; or  
25 (b) a Judge; or  
26 (c) a magistrate;
- 27 under any other law to order a stay of proceedings.  
28

1 **Division 3—Decisions of the Domestic Offsets Integrity**  
2 **Committee**

3 **245A Review by the Administrative Appeals Tribunal**

4 Applications may be made to the Administrative Appeals Tribunal  
5 for review of any of the following decisions of the Domestic  
6 Offsets Integrity Committee:

- 7 (a) a decision under section 112 to refuse to endorse a proposal  
8 for a methodology determination;  
9 (b) a decision under section 120 to refuse to endorse a proposal  
10 for the variation of a methodology determination.  
11

1 **Part 25—Carbon Credits Administrator**  
2

3 **246 Carbon Credits Administrator**

- 4 (1) There is to be a Carbon Credits Administrator.

5 Note: In this Act, *Administrator* means the Carbon Credits Administrator—  
6 see section 5.

- 7 (2) The Administrator is to be a person who is:  
8 (a) an SES employee in the Department; and  
9 (b) specified in a written instrument made by the Secretary.
- 10 (3) An instrument under paragraph (2)(b) is not a legislative  
11 instrument.

12 **247 Functions of the Administrator**

13 The Administrator has the following functions:

- 14 (a) such functions as are conferred on the Administrator by this  
15 Act or the regulations;  
16 (b) such functions as are conferred on the Administrator by the  
17 *Australian National Registry of Emissions Units Act 2011* or  
18 regulations under that Act;  
19 (c) such functions as are conferred on the Administrator by any  
20 other law of the Commonwealth;  
21 (d) to do anything incidental to or conducive to the performance  
22 of any of the above functions.

23 **248 Acting Administrator**

- 24 (1) The Secretary may, by written instrument, appoint a person to act  
25 as the Administrator:  
26 (a) during a vacancy in the office of the Administrator (whether  
27 or not an appointment has previously been made to the  
28 office); or  
29 (b) during any period, or during all periods, when the  
30 Administrator:  
31 (i) is absent from duty or Australia; or

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- 1 (ii) is, for any reason, unable to perform the duties of the  
2 office.
- 3 (2) A person is not eligible for appointment to act as the Administrator  
4 unless the person is eligible for appointment as the Administrator.
- 5 (3) Anything done by or in relation to a person purporting to act under  
6 an appointment is not invalid merely because:
- 7 (a) the occasion for the appointment had not arisen; or  
8 (b) there was a defect or irregularity in connection with the  
9 appointment; or  
10 (c) the appointment had ceased to have effect; or  
11 (d) the occasion to act had not arisen or had ceased.
- 12 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

**249 Delegation by the Administrator**

- 14 (1) The Administrator may, by writing, delegate any or all of the  
15 Administrator's functions or powers to:
- 16 (a) an SES employee, or acting SES employee, in the  
17 Department; or  
18 (b) an APS employee who holds or performs the duties of an  
19 Executive Level 2 position, or an equivalent position, in the  
20 Department.
- 21 (2) A delegate must comply with any written directions of the  
22 Administrator.
- 23 (3) Subsection (1) does not apply to a power to make, vary or revoke a  
24 legislative instrument.

**250 Administrator to be assisted by APS employees in the  
26 Department**

27 The Administrator is to be assisted by APS employees in the  
28 Department who are made available for the purpose by the  
29 Secretary.

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1       **251 Other persons assisting the Administrator**

2                   The Administrator may also be assisted:  
3                   (a) by officers and employees of Agencies (within the meaning  
4                   of the *Public Service Act 1999*) other than the Department; or  
5                   (b) by officers and employees of authorities of the  
6                   Commonwealth; or  
7                   (c) by officers and employees of a State or Territory; or  
8                   (d) by officers and employees of authorities of a State or  
9                   Territory;  
10                  whose services are made available to the Administrator in  
11                  connection with the performance of any of his or her functions.

12       **252 Consultants**

- 13                  (1) The Administrator may, on behalf of the Commonwealth, engage  
14                  persons having suitable qualifications and experience as  
15                  consultants to the Administrator.  
16                  (2) The consultants are to be engaged on the terms and conditions that  
17                  the Administrator determines in writing.

18       **253 Minister may give directions to the Administrator**

- 19                  (1) The Minister may, by legislative instrument, give directions to the  
20                  Administrator in relation to the performance of his or her  
21                  functions.

22                  Note 1:    For variation and revocation, see subsection 33(3) of the *Acts*  
23                  *Interpretation Act 1901*.

24                  Note 2:    Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative*  
25                  *Instruments Act 2003* do not apply to the direction (see sections 44  
26                  and 54 of that Act).

- 27                  (2) A direction under subsection (1) must be of a general nature only.  
28                  (3) The Administrator must comply with a direction under  
29                  subsection (1).  
30

1 **Part 26—Domestic Offsets Integrity Committee**

2 **Division 1—Establishment and functions of the Domestic**  
3 **Offsets Integrity Committee**

4 **254 Establishment of the Domestic Offsets Integrity Committee**

5 The Domestic Offsets Integrity Committee is established.

6 **255 Functions of the Domestic Offsets Integrity Committee**

7 The Domestic Offsets Integrity Committee has the following  
8 functions:

- 9 (a) the functions that are conferred on it by this Act and the  
10 regulations;
- 11 (b) to advise the Minister about matters that:  
12 (i) relate to offsets projects; and  
13 (ii) are referred to the Committee by the Minister;
- 14 (c) to advise the Secretary about matters that:  
15 (i) relate to offsets projects; and  
16 (ii) are referred to the Committee by the Secretary;
- 17 (d) to do anything incidental to or conducive to the performance  
18 of the above functions.  
19

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1 **Division 2—Membership of the Domestic Offsets Integrity**  
2 **Committee**

3 **256 Membership of the Domestic Offsets Integrity Committee**

4 The Domestic Offsets Integrity Committee consists of the  
5 following members:

- 6 (a) a Chair;  
7 (b) at least 4, and not more than 5, other members.

8 **257 Appointment of Domestic Offsets Integrity Committee members**

- 9 (1) Each Domestic Offsets Integrity Committee member is to be  
10 appointed by the Minister by written instrument.

11 Note: A Domestic Offsets Integrity Committee member is eligible for  
12 reappointment: see the *Acts Interpretation Act 1901*.

- 13 (2) A person is not eligible for appointment as a Domestic Offsets  
14 Integrity Committee member unless the Minister is satisfied that  
15 the person has:

- 16 (a) substantial experience or knowledge; and  
17 (b) significant standing;

18 in at least one field of expertise that is relevant to the functions of  
19 the Domestic Offsets Integrity Committee.

- 20 (3) The Minister must ensure that:

- 21 (a) the Chair of the Domestic Offsets Integrity Committee is not  
22 a person covered by subsection (4); and  
23 (b) a majority of the other Domestic Offsets Integrity Committee  
24 members are not persons covered by subsection (4).

- 25 (4) This subsection applies to the following persons:

- 26 (a) an employee of the Commonwealth;  
27 (b) an employee of an authority of the Commonwealth;  
28 (c) a person who holds a full-time office under a law of the  
29 Commonwealth.

- 30 (5) The Minister must ensure that one Domestic Offsets Integrity  
31 Committee member:



- 1 (a) is an SES employee in the Department; or  
2 (b) holds or performs the duties of an Executive Level 2 position,  
3 or an equivalent position, in the Department.
- 4 (6) The Minister must ensure that one Domestic Offsets Integrity  
5 Committee member is an officer of the Commonwealth Scientific  
6 and Industrial Research Organisation nominated by the Chief  
7 Executive of the Commonwealth Scientific and Industrial Research  
8 Organisation.
- 9 (7) A Domestic Offsets Integrity Committee member holds office on a  
10 part-time basis.

11 **258 Period for appointment for Domestic Offsets Integrity**  
12 **Committee members**

13 A Domestic Offsets Integrity Committee member holds office for  
14 the period specified in the instrument of appointment. The period  
15 must not exceed 5 years.

16 Note: For re-appointment, see the *Acts Interpretation Act 1901*.

17 **259 Acting Domestic Offsets Integrity Committee members**

18 *Acting Chair of Domestic Offsets Integrity Committee*

- 19 (1) The Minister may appoint a Domestic Offsets Integrity Committee  
20 member to act as the Chair of the Domestic Offsets Integrity  
21 Committee:
- 22 (a) during a vacancy in the office of the Domestic Offsets  
23 Integrity Committee Chair (whether or not an appointment  
24 has previously been made to the office); or
- 25 (b) during any period, or during all periods, when the Chair of  
26 the Domestic Offsets Integrity Committee:
- 27 (i) is absent from duty or from Australia; or  
28 (ii) is, for any reason, unable to perform the duties of the  
29 office.

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1                                    *Acting Domestic Offsets Integrity Committee member (other than*  
2                                    *the Chair)*

3                                    (2) The Minister may appoint a person to act as a Domestic Offsets  
4                                    Integrity Committee member (other than the Chair of the Domestic  
5                                    Offsets Integrity Committee):

6                                    (a) during a vacancy in the office of a Domestic Offsets Integrity  
7                                    Committee member (other than the Chair of the Domestic  
8                                    Offsets Integrity Committee), whether or not an appointment  
9                                    has previously been made to the office; or

10                                   (b) during any period, or during all periods, when a Domestic  
11                                   Offsets Integrity Committee member (other than the Chair of  
12                                   the Domestic Offsets Integrity Committee):

13                                   (i) is absent from duty or Australia; or

14                                   (ii) is, for any reason, unable to perform the duties of the  
15                                   office.

16                                   *Eligibility*

17                                   (3) A person is not eligible for appointment to act as:

18                                   (a) the Chair of the Domestic Offsets Integrity Committee; or

19                                   (b) a Domestic Offsets Integrity Committee member (other than  
20                                   the Chair of the Domestic Offsets Integrity Committee);

21                                   unless the person is eligible for appointment as a Domestic Offsets  
22                                   Integrity Committee member.

23                                   Note:        See subsection 257(2).

24                                   *Validation*

25                                   (4) Anything done by or in relation to a person purporting to act under  
26                                   an appointment is not invalid merely because:

27                                   (a) the occasion for the appointment had not arisen; or

28                                   (b) there was a defect or irregularity in connection with the  
29                                   appointment; or

30                                   (c) the appointment ceased to have effect; or

31                                   (d) the occasion to act had not arisen or had ceased.

32                                   Note:        See sections 20 and 33A of the *Acts Interpretation Act 1901*.

1 **260 Procedures**

- 2 (1) The regulations may prescribe the procedures to be followed at or  
3 in relation to meetings of the Domestic Offsets Integrity  
4 Committee, including matters relating to the following:  
5 (a) the convening of meetings of the Domestic Offsets Integrity  
6 Committee;  
7 (b) the number of Domestic Offsets Integrity Committee  
8 members who are to constitute a quorum;  
9 (c) the selection of a Domestic Offsets Integrity Committee  
10 member to preside at meetings of the Domestic Offsets  
11 Integrity Committee in the absence of the Chair of the  
12 Domestic Offsets Integrity Committee;  
13 (d) the manner in which questions arising at a meeting of the  
14 Domestic Offsets Integrity Committee are to be decided.
- 15 (2) A resolution is taken to have been passed at a meeting of the  
16 Domestic Offsets Integrity Committee if:  
17 (a) without meeting, a majority of Domestic Offsets Integrity  
18 Committee members indicate agreement with the resolution  
19 in accordance with the method determined by the Domestic  
20 Offsets Integrity Committee under subsection (3); and  
21 (b) all Domestic Offsets Integrity Committee members were  
22 informed of the proposed resolution, or reasonable efforts  
23 had been made to inform all Domestic Offsets Integrity  
24 Committee members of the proposed resolution.
- 25 (3) Subsection (2) applies only if the Domestic Offsets Integrity  
26 Committee:  
27 (a) determines that it applies; and  
28 (b) determines the method by which Domestic Offsets Integrity  
29 Committee members are to indicate agreement with  
30 resolutions.
- 31 (4) If a Domestic Offsets Integrity Committee member is an APS  
32 employee in the Department, the member:  
33 (a) is not entitled to vote for a resolution at a meeting of the  
34 Domestic Offsets Integrity Committee; and

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- 1 (b) is not entitled to indicate agreement with a resolution as  
2 mentioned in paragraph (2)(a); and  
3 (c) is not to be counted for the purposes of determining whether  
4 a majority of Domestic Offsets Integrity Committee  
5 members:  
6 (i) have voted for a resolution at a meeting of the Domestic  
7 Offsets Integrity Committee; or  
8 (ii) have indicated agreement with a resolution as  
9 mentioned in paragraph (2)(a).

10 **261 Disclosure of interests to the Minister**

11 A Domestic Offsets Integrity Committee member must give  
12 written notice to the Minister of all interests, pecuniary or  
13 otherwise, that the member has or acquires and that conflict or  
14 could conflict with the proper performance of the member's  
15 functions.

16 **262 Disclosure of interests to Domestic Offsets Integrity Committee**

- 17 (1) A Domestic Offsets Integrity Committee member who has an  
18 interest, pecuniary or otherwise, in a matter being considered or  
19 about to be considered by the Domestic Offsets Integrity  
20 Committee must disclose the nature of the interest to a meeting of  
21 the Domestic Offsets Integrity Committee.
- 22 (2) The disclosure must be made as soon as possible after the relevant  
23 facts have come to the Domestic Offsets Integrity Committee  
24 member's knowledge.
- 25 (3) The disclosure must be recorded in the minutes of the meeting of  
26 the Domestic Offsets Integrity Committee.
- 27 (4) Unless the Domestic Offsets Integrity Committee otherwise  
28 determines, the Domestic Offsets Integrity Committee member:  
29 (a) must not be present during any deliberation by the Domestic  
30 Offsets Integrity Committee on the matter; and  
31 (b) must not take part in any decision of the Domestic Offsets  
32 Integrity Committee with respect to the matter.

- 1 (5) For the purposes of making a determination under subsection (4),  
2 the Domestic Offsets Integrity Committee member:  
3 (a) must not be present during any deliberation of the Domestic  
4 Offsets Integrity Committee for the purpose of making the  
5 determination; and  
6 (b) must not take part in making the determination.
- 7 (6) A determination under subsection (4) must be recorded in the  
8 minutes of the meeting of the Domestic Offsets Integrity  
9 Committee.

10 **263 Outside employment**

11 A Domestic Offsets Integrity Committee member must not engage  
12 in any paid employment that conflicts or may conflict with the  
13 proper performance of his or her duties.

14 **264 Remuneration and allowances**

- 15 (1) A Domestic Offsets Integrity Committee member is to be paid the  
16 remuneration that is determined by the Remuneration Tribunal. If  
17 no determination of that remuneration by the Tribunal is in  
18 operation, the member is to be paid the remuneration that is  
19 prescribed.
- 20 (2) A Domestic Offsets Integrity Committee member is to be paid the  
21 allowances that are prescribed.
- 22 (3) This section has effect subject to the *Remuneration Tribunal Act*  
23 *1973*.

24 **265 Leave of absence**

- 25 (1) The Minister may grant leave of absence to the Chair of the  
26 Domestic Offsets Integrity Committee on the terms and conditions  
27 that the Minister determines.
- 28 (2) The Chair of the Domestic Offsets Integrity Committee may grant  
29 leave of absence to a Domestic Offsets Integrity Committee  
30 member on the terms and conditions that the Chair determines.

Section 266

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1       **266 Resignation**

- 2                   (1) A Domestic Offsets Integrity Committee member may resign his or  
3                   her appointment by giving the Minister a written resignation.
- 4                   (2) The resignation takes effect on the day it is received by the  
5                   Minister or, if a later day is specified in the resignation, on that  
6                   later day.

7       **267 Termination of appointment**

- 8                   (1) The Minister may terminate the appointment of a Domestic Offsets  
9                   Integrity Committee member for misbehaviour or physical or  
10                  mental incapacity.
- 11                  (2) The Minister may terminate the appointment of a Domestic Offsets  
12                  Integrity Committee member if:
- 13                  (a) the member:
- 14                      (i) becomes bankrupt; or  
15                      (ii) applies to take the benefit of any law for the relief of  
16                      bankrupt or insolvent debtors; or  
17                      (iii) compounds with his or her creditors; or  
18                      (iv) makes an assignment of remuneration for the benefit of  
19                      his or her creditors; or
- 20                  (b) the member is absent, except on leave of absence, for 3  
21                  consecutive meetings of the Domestic Offsets Integrity  
22                  Committee; or
- 23                  (c) the member engages in paid employment that conflicts or  
24                  may conflict with the proper performance of his or her duties  
25                  (see section 263); or
- 26                  (d) the member fails, without reasonable excuse, to comply with  
27                  section 261 or 262.
- 28                  (3) The Minister may terminate the appointment of the Chair of the  
29                  Domestic Offsets Integrity Committee if the Chair is:
- 30                      (a) an employee of the Commonwealth; or  
31                      (b) an employee of an authority of the Commonwealth; or  
32                      (c) a person who holds a full-time office under a law of the  
33                      Commonwealth.

- 1                   (4) The Minister may terminate the appointment of a Domestic Offsets  
2                   Integrity Committee member if the Minister is of the opinion that  
3                   the performance of the member has been unsatisfactory.

4                   **268 Other terms and conditions**

5                   A Domestic Offsets Integrity Committee member holds office on  
6                   the terms and conditions (if any) in relation to matters not covered  
7                   by this Act that are determined by the Minister.

8                   **269 Assistance to Domestic Offsets Integrity Committee**

- 9                   (1) Any or all of the following bodies:  
10                   (a) the Administrator;  
11                   (b) the Department;  
12                   (c) any other Department, agency or authority of the  
13                   Commonwealth;  
14                   may assist the Domestic Offsets Integrity Committee in the  
15                   performance of its functions.
- 16                   (2) The assistance may include the following:  
17                   (a) the provision of information;  
18                   (b) the provision of advice;  
19                   (c) the making available of resources and facilities (including  
20                   secretariat services and clerical assistance).
- 21                   (3) If an officer or employee of a body mentioned in subsection (1)  
22                   assists the Domestic Offsets Integrity Committee, the officer or  
23                   employee is taken, for the purposes of this Act, to be a person  
24                   assisting the Domestic Offsets Integrity Committee under this  
25                   section.  
26

1 **Part 27—Secrecy**  
2

3 **270 Secrecy**

- 4 (1) A person commits an offence if:  
5 (a) the person is, or has been, an entrusted public official; and  
6 (b) the person has obtained protected information in his or her  
7 capacity as an entrusted public official; and  
8 (c) the person:  
9 (i) discloses the information to another person; or  
10 (ii) uses the information.

11 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

12 *Exceptions*

- 13 (2) Each of the following is an exception to the prohibition in  
14 subsection (1):  
15 (a) the disclosure or use is authorised by a provision of this Part;  
16 (b) the disclosure or use is in compliance with a requirement  
17 under:  
18 (i) a law of the Commonwealth; or  
19 (ii) a prescribed law of a State or a Territory.

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

- 22 (3) Except where it is necessary to do so for the purposes of giving  
23 effect to this Act or a legislative instrument under this Act, an  
24 entrusted public official is not to be required:  
25 (a) to produce to a court or tribunal a document containing  
26 protected information; or  
27 (b) to disclose protected information to a court or tribunal.

28 **271 Disclosure or use for the purposes of this Act or a legislative**  
29 **instrument under this Act**

30 An entrusted public official may disclose or use protected  
31 information if:



- 1 (a) the disclosure or use is for the purposes of this Act or a
- 2 legislative instrument under this Act; or
- 3 (b) the disclosure or use is for the purposes of the *Australian*
- 4 *National Registry of Emissions Units Act 2011* or a
- 5 legislative instrument under that Act;
- 6 (c) the disclosure or use is for the purposes of the performance of
- 7 the functions of the Administrator or the Domestic Offsets
- 8 Integrity Committee under this Act or a legislative instrument
- 9 under this Act; or
- 10 (d) the disclosure or use is in the course of the entrusted public
- 11 official's employment or service as an entrusted public
- 12 official.

13 **272 Disclosure to the Minister**

14 An entrusted public official may disclose protected information to  
15 the Minister.

16 **273 Disclosure to the Secretary etc.**

17 An entrusted public official may disclose protected information to:

- 18 (a) the Secretary; or
- 19 (b) an officer of the Department who is authorised by the
- 20 Secretary, in writing, for the purposes of this section;
- 21 if the disclosure is for the purposes of:
- 22 (c) advising the Minister; or
- 23 (d) facilitating Australia's compliance with its international
- 24 obligations under:
  - 25 (i) the Climate Change Convention; or
  - 26 (ii) the Kyoto Protocol; or
  - 27 (ii) an international agreement (if any) that is the successor
  - 28 (whether immediate or otherwise) to the Kyoto
  - 29 Protocol; or
- 30 (e) facilitating the development of an international agreement (if
- 31 any) that is to be the successor (whether immediate or
- 32 otherwise) to the Kyoto Protocol.

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1     **274 Disclosure or use for purposes of development of methodology**  
2             **determinations etc.**

- 3             (1) The Administrator may disclose or use protected information that  
4                 relates to a particular offsets project if:
- 5                 (a) under section 27, the Administrator has declared the offsets  
6                     project to be an eligible offsets project; and
  - 7                 (b) more than 7 years have passed since the application under  
8                     section 22 was made for the declaration; and
  - 9                 (c) the information was:
    - 10                     (i) contained in the application; or
    - 11                     (ii) given in connection with the application; or
    - 12                     (iii) contained in an offsets report about the project; and
  - 13                 (d) the disclosure or use is for the purposes of facilitating the  
14                     development of either or both of the following:
    - 15                     (i) one or more methodology determinations;
    - 16                     (ii) one or more proposals for methodology determinations.
- 17             (2) The Administrator may disclose or use protected information if:
- 18                 (a) the information was:
    - 19                     (i) contained in an application under section 108 for  
20                     endorsement of a specified proposal for a methodology  
21                     determination; or
    - 22                     (ii) contained in an application under section 116 for  
23                     endorsement of a specified proposal for the variation of  
24                     a methodology determination; or
    - 25                     (iii) given in connection with an application covered by  
26                     subparagraph (i) or (ii); and
  - 27                 (b) more than 7 years have passed since the application was  
28                     made; and
  - 29                 (c) the disclosure or use is for the purposes of facilitating the  
30                     development of either or both of the following:
    - 31                     (i) one or more methodology determinations;
    - 32                     (ii) one or more proposals for methodology determinations.
- 33             (3) Subsections (1) and (2) do not apply to personal information  
34                 (within the meaning of the *Privacy Act 1988*).

**275 Disclosure to a Royal Commission**

- 1
- 2 (1) An entrusted public official may disclose protected information to  
3 a Royal Commission.
- 4 (2) The Administrator may, by writing, impose conditions to be  
5 complied with in relation to protected Administrator information  
6 disclosed under subsection (1) by:
- 7 (a) the Administrator; or  
8 (b) a delegate of the Administrator; or  
9 (c) a person assisting the Administrator under section 250; or  
10 (d) a person whose services are made available to the  
11 Administrator under section 251; or  
12 (e) a person engaged as a consultant under section 252; or  
13 (f) an audit team leader; or  
14 (g) a person assisting an audit team leader.
- 15 (3) The Chair of the Domestic Offsets Integrity Committee may, by  
16 writing, impose conditions to be complied with in relation to  
17 protected DOIC information disclosed under subsection (1) by:
- 18 (a) the Chair; or  
19 (b) a Domestic Offsets Integrity Committee member; or  
20 (c) a person assisting the Domestic Offsets Integrity Committee  
21 under section 269.
- 22 (4) An instrument under subsection (2) or (3) is not a legislative  
23 instrument.

**276 Disclosure to certain persons and bodies**

*Scope*

- 24
- 25
- 26 (1) This section applies if the Administrator is satisfied that particular  
27 protected Administrator information will enable or assist any of the  
28 following persons or bodies:
- 29 (a) the Greenhouse and Energy Data Officer;  
30 (b) Australian Carbon Trust Limited (ACN 141 478 748);  
31 (c) a prescribed professional disciplinary body;

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- 1 (d) a person or body responsible for the administration of a  
2 scheme that involves the issue of prescribed eligible carbon  
3 units;  
4 to perform or exercise any of the functions or powers of the person  
5 or body.

6 *Disclosure*

- 7 (2) The Administrator may disclose that protected Administrator  
8 information to the person or body concerned.
- 9 (3) If any of the following individuals:  
10 (a) a delegate of the Administrator;  
11 (b) an individual assisting the Administrator under section 250;  
12 (c) an individual whose services are made available to the  
13 Administrator under section 251;  
14 (d) an individual engaged as a consultant under section 252;  
15 (e) an individual who is an audit team leader;  
16 (f) an individual assisting an audit team leader;  
17 is authorised by the Administrator, in writing, for the purposes of  
18 this section, the individual may disclose that protected  
19 Administrator information to the person or body concerned.

20 *Secondary disclosure and use*

- 21 (4) A person commits an offence if:  
22 (a) the person is:  
23 (i) a prescribed professional disciplinary body; or  
24 (ii) a member of a prescribed professional disciplinary  
25 body; and  
26 (b) protected Administrator information has been disclosed  
27 under subsection (2) or (3) to the body; and  
28 (c) the person:  
29 (i) discloses the information to another person; or  
30 (ii) uses the information.

31 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 32 (5) Subsection (4) does not apply if:

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- 1 (a) the disclosure or use is with the consent of the Administrator;  
 2 and  
 3 (a) the disclosure or use is for the purpose of:  
 4 (i) deciding whether or not to take disciplinary or other  
 5 action; or  
 6 (ii) taking that action.

7 Note: A defendant bears an evidential burden in relation to a matter in  
 8 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

9 *Conditions*

- 10 (6) The Administrator may, by writing, impose conditions to be  
 11 complied with in relation to protected Administrator information  
 12 disclosed under subsection (2) or (3).  
 13 (7) A person commits an offence if:  
 14 (a) the person is subject to a condition under subsection (6); and  
 15 (b) the person engages in conduct; and  
 16 (c) the person's conduct breaches the condition.  
 17 Penalty: Imprisonment for 2 years or 120 penalty units, or both.  
 18 (8) An instrument under subsection (6) is not a legislative instrument.

19 **277 Disclosure to certain financial bodies**

20 *Scope*

- 21 (1) This section applies if the Administrator is satisfied that particular  
 22 protected Administrator information will enable or assist a body  
 23 corporate that:  
 24 (a) either:  
 25 (i) conducts, or is involved in the supervision of, a  
 26 financial market; or  
 27 (ii) is a body corporate that holds an Australian CS facility  
 28 licence; and  
 29 (b) is specified in the regulations;  
 30 to monitor compliance with, enforce, or perform functions or  
 31 exercise powers under:

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- 1 (c) the *Corporations Act 2001*; or  
2 (d) the business law of a State or Territory; or  
3 (e) the business law of a foreign country; or  
4 (f) the operating rules (if any) of the body corporate.

5 *Disclosure*

- 6 (2) The Administrator may disclose that protected Administrator  
7 information to the body corporate.
- 8 (3) If any of the following individuals:  
9 (a) a delegate of the Administrator;  
10 (b) an individual assisting the Administrator under section 250;  
11 (c) an individual whose services are made available to the  
12 Administrator under section 251;  
13 (d) an individual engaged as a consultant under section 252;  
14 (e) an individual who is an audit team leader;  
15 (f) an individual assisting an audit team leader;  
16 is authorised by the Administrator, in writing, for the purposes of  
17 this section, the individual may disclose that protected  
18 Administrator information to the body corporate.

19 *Secondary disclosure and use*

- 20 (4) A person commits an offence if:  
21 (a) the person is:  
22 (i) a body corporate; or  
23 (ii) an officer, employee or agent of a body corporate; and  
24 (b) protected Administrator information has been disclosed  
25 under subsection (2) or (3) to the body corporate; and  
26 (c) the person:  
27 (i) discloses the information to another person; or  
28 (ii) uses the information.

29 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 30 (5) Subsection (4) does not apply if:  
31 (a) the disclosure or use is with the consent of the Administrator;  
32 and

- 1 (b) the disclosure or use is for the purpose of monitoring  
 2 compliance with, enforcing, or performing functions or  
 3 exercising powers under:  
 4 (i) the *Corporations Act 2001*; or  
 5 (ii) the business law of a State or Territory; or  
 6 (iii) the business law of a foreign country; or  
 7 (iv) the operating rules (if any) of the body corporate.

8 Note: A defendant bears an evidential burden in relation to a matter in  
 9 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

10 *Conditions*

- 11 (6) The Administrator may, by writing, impose conditions to be  
 12 complied with by the body corporate and its officers, employees  
 13 and agents in relation to protected Administrator information  
 14 disclosed to the body corporate under subsection (2) or (3).  
 15 (7) A person commits an offence if:  
 16 (a) the person is subject to a condition under subsection (6); and  
 17 (b) the person engages in conduct; and  
 18 (c) the person's conduct breaches the condition.

19 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 20 (8) An instrument under subsection (6) is not a legislative instrument.

21 *Meaning of expressions*

- 22 (9) In this section, the following expressions have the same meanings  
 23 as in the *Corporations Act 2001*:  
 24 (a) *Australian CS facility licence*;  
 25 (b) *financial market*;  
 26 (c) *officer*;  
 27 (d) *operating rules*.

28 **278 Disclosure with consent**

29 An entrusted public official may disclose protected information  
 30 that relates to the affairs of a person if:

- 31 (a) the person has consented to the disclosure; and

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1 (b) the disclosure is in accordance with that consent.

2 **279 Disclosure to reduce threat to life or health**

3 An entrusted public official may disclose protected information if:

- 4 (a) the entrusted public official believes on reasonable grounds  
5 that the disclosure is necessary to prevent or lessen a serious  
6 and imminent threat to the life or health of an individual; and  
7 (b) the disclosure is for the purposes of preventing or lessening  
8 that threat.

9 **280 Disclosure of publicly available information**

10 An entrusted public official may disclose protected information if  
11 it is already publicly available.

12 **281 Disclosure of summaries or statistics**

13 Any of the following persons:

- 14 (a) the Administrator;  
15 (b) a delegate of the Administrator;  
16 (c) a person assisting the Administrator under section 250;  
17 (d) a person whose services are made available to the  
18 Administrator under section 251;  
19 (e) a person engaged as a consultant under section 252;  
20 (f) an audit team leader;  
21 (g) a person assisting an audit team leader;  
22 may disclose:  
23 (h) summaries of protected Administrator information; or  
24 (i) statistics derived from protected Administrator information;  
25 if those summaries or statistics, as the case may be, are not likely  
26 to enable the identification of a person.



**282 Disclosure for purposes of law enforcement—protected  
Administrator information**

*Scope*

- (1) This section applies if the Administrator is satisfied that disclosure of particular protected Administrator information is reasonably necessary for:
- (a) the enforcement of the criminal law; or
  - (b) the enforcement of a law imposing a pecuniary penalty; or
  - (c) the protection of the public revenue.

*Disclosure*

- (2) The Administrator may disclose that protected Administrator information to:
- (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
  - (b) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.
- (3) If any of the following individuals:
- (a) a delegate of the Administrator;
  - (b) an individual assisting the Administrator under section 250;
  - (c) an individual whose services are made available to the Administrator under section 251;
  - (d) an individual engaged as a consultant under section 252;
  - (e) an individual who is an audit team leader;
  - (f) an individual assisting an audit team leader;
- is authorised by the Administrator, in writing, for the purposes of this section, the individual may disclose that protected Administrator information to:
- (g) a Department, agency or authority of the Commonwealth, a State or a Territory; or
  - (h) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

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*Secondary disclosure and use*

- 1
- 2 (4) A person commits an offence if:
- 3 (a) the person is, or has been, an employee or officer of:
- 4 (i) a Department, agency or authority of the
- 5 Commonwealth, a State or a Territory; or
- 6 (ii) an Australian police force; and
- 7 (b) protected Administrator information has been disclosed
- 8 under subsection (2) or (3) to the Department, agency,
- 9 authority or police force, as the case may be; and
- 10 (c) the person has obtained the information in the person's
- 11 capacity as an employee or officer of the Department,
- 12 agency, authority or police force, as the case may be; and
- 13 (d) the person:
- 14 (i) discloses the information to another person; or
- 15 (ii) uses the information.

16 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 17 (5) Subsection (4) does not apply if:
- 18 (a) the disclosure or use is with the consent of the Administrator;
- 19 and
- 20 (b) the disclosure or use is for the purpose of:
- 21 (i) enforcing the criminal law; or
- 22 (ii) enforcing a law imposing a pecuniary penalty; or
- 23 (iii) protecting the public revenue.

24 Note: A defendant bears an evidential burden in relation to a matter in

25 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

26 *Conditions*

- 27 (6) The Administrator may, by writing, impose conditions to be
- 28 complied with in relation to protected Administrator information
- 29 disclosed under subsection (2) or (3).
- 30 (7) A person commits an offence if:
- 31 (a) the person is subject to a condition under subsection (6); and
- 32 (b) the person engages in conduct; and
- 33 (c) the person's conduct breaches the condition.

1                   Penalty: Imprisonment for 2 years or 120 penalty units, or both.

2                   (8) An instrument under subsection (6) is not a legislative instrument.

3                   **283 Disclosure for purposes of law enforcement—protected DOIC**  
 4                   **information**

5                   *Scope*

6                   (1) This section applies if the Chair of the Domestic Offsets Integrity  
 7                   Committee is satisfied that disclosure of particular protected DOIC  
 8                   information is reasonably necessary for:

- 9                   (a) the enforcement of the criminal law; or
- 10                  (b) the enforcement of a law imposing a pecuniary penalty; or
- 11                  (c) the protection of the public revenue.

12                  *Disclosure*

13                  (2) The Chair of the Domestic Offsets Integrity Committee may  
 14                  disclose that protected DOIC information to:

- 15                  (a) a Department, agency or authority of the Commonwealth, a  
 16                      State or a Territory; or
- 17                  (b) an Australian police force;  
 18                  whose functions include that enforcement or protection, for the  
 19                  purposes of that enforcement or protection.

20                  (3) If any of the following individuals:

- 21                  (a) a Domestic Offsets Integrity Committee member;
- 22                  (b) an individual assisting the Domestic Offsets Integrity  
 23                      Committee under section 269;

24                  is authorised by the Chair of the Domestic Offsets Integrity  
 25                  Committee, in writing, for the purposes of this section, the  
 26                  individual may disclose that protected DOIC information to:

- 27                  (c) a Department, agency or authority of the Commonwealth, a  
 28                      State or a Territory; or
- 29                  (d) an Australian police force;  
 30                  whose functions include that enforcement or protection, for the  
 31                  purposes of that enforcement or protection.

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1                                    *Secondary disclosure and use*

- 2                    (4) A person commits an offence if:
- 3                            (a) the person is, or has been, an employee or officer of:
- 4                                    (i) a Department, agency or authority of the
- 5    Commonwealth, a State or a Territory; or
- 6                                    (ii) an Australian police force; and
- 7                            (b) protected DOIC information has been disclosed under
- 8                                    subsection (2) or (3) to the Department, agency, authority or
- 9                                    police force, as the case may be; and
- 10                            (c) the person has obtained the information in the person's
- 11                                    capacity as an employee or officer of the Department,
- 12                                    agency, authority or police force, as the case may be; and
- 13                            (d) the person:
- 14                                    (i) discloses the information to another person; or
- 15                                    (ii) uses the information.

16                                    Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 17                    (5) Subsection (4) does not apply if:
- 18                            (a) the disclosure or use is with the consent of the Chair of the
- 19                                    Domestic Offsets Integrity Committee; and
- 20                            (b) the disclosure or use is for the purpose of:
- 21                                    (i) enforcing the criminal law; or
- 22                                    (ii) enforcing a law imposing a pecuniary penalty; or
- 23                                    (iii) protecting the public revenue.

24                    Note:            A defendant bears an evidential burden in relation to a matter in

25                                    subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

26                                    *Conditions*

- 27                    (6) The Chair of the Domestic Offsets Integrity Committee may, by
- 28                                    writing, impose conditions to be complied with in relation to
- 29                                    protected DOIC information disclosed under subsection (2) or (3).
- 30                    (7) A person commits an offence if:
- 31                            (a) the person is subject to a condition under subsection (6); and
- 32                            (b) the person engages in conduct; and
- 33                            (c) the person's conduct breaches the condition.

1                   Penalty: Imprisonment for 2 years or 120 penalty units, or both.

2                   (8) An instrument under subsection (6) is not a legislative instrument.

3                   **284 Disclosure for purposes of review of Act**

4                   An entrusted public official may disclose protected information to  
5                   a person if:

6                   (a) the person is conducting a review under section 306; and

7                   (b) the disclosure is for the purposes of that review.

8                   **285 Disclosure for purposes of review of compliance with Australia’s**  
9                   **international obligations**

10                  (1) The Administrator may disclose protected Administrator  
11                  information to another person for the purpose of facilitating a  
12                  review of Australia’s compliance with its international obligations  
13                  relating to reporting of greenhouse gas emissions.

14                  (2) In this section:

15                         *emission* of greenhouse gas has the same meaning as in the  
16                         *National Greenhouse and Energy Reporting Act 2007*.  
17

1 **Part 28—Miscellaneous**  
2

3 **286 Miscellaneous functions of the Administrator**

4 The Administrator has the following functions:

- 5 (a) to monitor compliance with this Act and the associated  
6 provisions;
- 7 (b) to promote compliance with this Act and the associated  
8 provisions;
- 9 (c) to conduct and/or co-ordinate education programs about this  
10 Act and the associated provisions;
- 11 (d) to advise the Minister on matters relating to this Act and the  
12 associated provisions;
- 13 (e) to advise and assist persons in relation to their obligations  
14 under this Act and the associated provisions;
- 15 (f) to advise and assist prospective applicants in connection with  
16 ensuring that applications are in accordance with this Act;
- 17 (g) to advise and assist the representatives of persons in relation  
18 to compliance by persons with this Act and the associated  
19 provisions;
- 20 (h) to liaise with regulatory and other relevant bodies, whether in  
21 Australia or elsewhere, about co-operative arrangements for  
22 matters relating to this Act and the associated provisions;
- 23 (i) to collect, analyse, interpret and disseminate statistical  
24 information relating to the operation of this Act and the  
25 associated provisions.

26 **287 Computerised decision-making**

- 27 (1) The Administrator may, by legislative instrument, arrange for the  
28 use, under the Administrator's control, of computer programs for  
29 any purposes for which the Administrator may, or must, under this  
30 Act or the regulations:
- 31 (a) make a decision; or  
32 (b) exercise any power or comply with any obligation; or  
33 (c) do anything else related to making a decision or exercising a  
34 power or complying with an obligation.

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- 1 (2) For the purposes of this Act and the regulations, the Administrator  
2 is taken to have:  
3 (a) made a decision; or  
4 (b) exercised a power or complied with an obligation; or  
5 (c) done something else related to the making of a decision or  
6 the exercise of a power or the compliance with an obligation;  
7 that was made, exercised, complied with or done by the operation  
8 of a computer program under such an arrangement.

**9 288 Administrator's power to require further information***10 Applications*

- 11 (1) If:  
12 (a) a person makes an application to the Administrator under this  
13 Act or the regulations; and  
14 (b) the Administrator exercises a power, under another provision  
15 of this Act or the regulations, to require the applicant to give  
16 the Administrator further information in connection with the  
17 application;  
18 the Administrator:  
19 (c) must ensure that the further information is relevant to the  
20 matter to which the application relates; and  
21 (d) must ensure that the power is exercised in a reasonable way.

*22 Requests*

- 23 (2) If:  
24 (a) a person makes a request to the Administrator under this Act;  
25 and  
26 (b) the Administrator exercises a power, under another provision  
27 of this Act, to require the person to give the Administrator  
28 further information in connection with the request;  
29 the Administrator:  
30 (c) must ensure that the further information is relevant to the  
31 matter to which the request relates; and  
32 (d) must ensure that the power is exercised in a reasonable way.

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1     **289 Domestic Offsets Integrity Committee’s power to require**  
2     **further information**

3             If:

- 4               (a) a person makes an application to the Domestic Offsets  
5               Integrity Committee under this Act or the regulations; and  
6               (b) the Domestic Offsets Integrity Committee exercises a power,  
7               under another provision of this Act or the regulations, to  
8               require the applicant to give the Domestic Offsets Integrity  
9               Committee further information in connection with the  
10              application;

11            the Domestic Offsets Integrity Committee:

- 12               (c) must ensure that the further information is relevant to the  
13               matter to which the application relates; and  
14               (d) must ensure that the power is exercised in a reasonable way.

15     **290 Actions may be taken by an agent of a project proponent**

- 16            (1) The principles of agency apply in relation to the taking, by a  
17            project proponent for an eligible offsets project, of any of the  
18            following actions under this Act or the regulations:  
19               (a) making an application;  
20               (b) giving information in connection with an application;  
21               (c) withdrawing an application;  
22               (d) giving a report;  
23               (e) giving a notice (including an electronic notice);  
24               (f) making a submission;  
25               (g) making a request;  
26               (h) giving information in connection with a request.
- 27            (2) For example, the project proponent may authorise another person  
28            to be the project proponent’s agent for the purposes of making an  
29            application under this Act or the regulations on the project  
30            proponent’s behalf.
- 31            (3) To avoid doubt, this section does not, by implication, limit the  
32            application of the principles of agency to other matters arising  
33            under this Act or the regulations.



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**291 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.

**292 Delegation by a State Minister or a Territory Minister**

- 13
- 14 (1) A Minister of a State or Territory may, by writing, delegate any or  
15 all of his or her functions or powers under this Act to a person  
16 who:  
17 (a) is an officer or employee of the State or Territory, as the case  
18 may be; and  
19 (b) holds or performs the duties of an office or position that is  
20 equivalent to a position occupied by an SES employee in the  
21 Australian Public Service.

- 22 (2) In exercising powers under a delegation, the delegate must comply  
23 with any directions of the Minister of the State or the Minister of  
24 the Territory, as the case may be.

**293 Delegation by the Secretary**

- 25
- 26 (1) The Secretary may, by writing, delegate any or all of his or her  
27 functions or powers under this Act to an SES employee, or acting  
28 SES employee, in the Department.

29 Note: The expressions *SES employee* and *acting SES employee* are defined  
30 in the *Acts Interpretation Act 1901*.

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

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1       **294 Concurrent operation of State and Territory laws**

2                   This Act is not intended to exclude or limit the operation of a law  
3                   of a State or Territory that is capable of operating concurrently  
4                   with this Act.

5       **295 Law relating to legal professional privilege not affected**

6                   This Act does not affect the law relating to legal professional  
7                   privilege.

8       **296 Arrangements with States and Territories**

9                   *States*

- 10                  (1) The Minister may make arrangements with a Minister of a State  
11                  with respect to the administration of this Act, including:  
12                      (a) arrangements for the performance of the functions of a  
13                      magistrate under this Act by a magistrate of that State; and  
14                      (b) arrangements for the exercise of the powers conferred by  
15                      section 39 on relevant land registration officials of that State;  
16                      and  
17                      (c) arrangements for the exercise of the powers conferred by  
18                      section 40 on relevant land registration officials of that State.
- 19                  (2) The Minister may arrange with a Minister of a State with whom an  
20                  arrangement is in force under subsection (1) for the variation or  
21                  revocation of the arrangement.

22                   *Australian Capital Territory*

- 23                  (3) The Minister may make arrangements with a Minister of the  
24                  Australian Capital Territory with respect to the administration of  
25                  this Act, including:  
26                      (a) arrangements for the performance of the functions of a  
27                      magistrate under this Act by a magistrate of the Australian  
28                      Capital Territory; and  
29                      (b) arrangements for the exercise of the powers conferred by  
30                      section 39 on relevant land registration officials of the  
31                      Australian Capital Territory; and

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- 1 (c) arrangements for the exercise of the powers conferred by  
2 section 40 on relevant land registration officials of the  
3 Australian Capital Territory.
- 4 (4) The Minister may arrange with a Minister of the Australian Capital  
5 Territory for the variation or revocation of an arrangement in force  
6 under subsection (3).

7 *Northern Territory*

- 8 (5) The Minister may make arrangements with a Minister of the  
9 Northern Territory with respect to the administration of this Act,  
10 including:
- 11 (a) arrangements for the performance of the functions of a  
12 magistrate under this Act by a magistrate of the Northern  
13 Territory; and
- 14 (b) arrangements for the exercise of the powers conferred by  
15 section 39 on relevant land registration officials of the  
16 Northern Territory; and
- 17 (c) arrangements for the exercise of the powers conferred by  
18 section 40 on relevant land registration officials of the  
19 Northern Territory.
- 20 (6) The Minister may arrange with a Minister of the Northern Territory  
21 for the variation or revocation of an arrangement in force under  
22 subsection (5).

23 *Norfolk Island*

- 24 (7) The Minister may make arrangements with a Minister of Norfolk  
25 Island with respect to the administration of this Act, including:
- 26 (a) arrangements for the performance of the functions of a  
27 magistrate under this Act by a magistrate of Norfolk Island;  
28 and
- 29 (b) arrangements for the exercise of the powers conferred by  
30 section 39 on relevant land registration officials of Norfolk  
31 Island; and
- 32 (c) arrangements for the exercise of the powers conferred by  
33 section 40 on relevant land registration officials of Norfolk  
34 Island.

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1 (8) The Minister may arrange with a Minister of Norfolk Island for the  
2 variation or revocation of an arrangement in force under  
3 subsection (7).

4 *Gazettal*

5 (9) A copy of each instrument by which an arrangement under this  
6 section is made, varied or revoked is to be published in the *Gazette*.

7 *Instrument is not a legislative instrument*

8 (10) An instrument by which an arrangement under this section is made,  
9 varied or revoked is not a legislative instrument.

10 **297 Liability for damages**

11 None of the following:

- 12 (a) the Minister;
- 13 (b) a delegate of the Minister;
- 14 (c) the Secretary;
- 15 (d) a delegate of the Secretary;
- 16 (e) the Administrator;
- 17 (f) a delegate of the Administrator;
- 18 (g) an audit team leader;
- 19 (h) a Domestic Offsets Integrity Committee member;

20 is liable to an action or other proceeding for damages for, or in  
21 relation to, an act or matter in good faith done or omitted to be  
22 done:

- 23 (i) in the performance or purported performance of any function;  
24 or
- 25 (j) in the exercise or purported exercise of any power;  
26 conferred by this Act or the associated provisions.

27 **298 Executive power of the Commonwealth**

28 This Act does not, by implication, limit the executive power of the  
29 Commonwealth.

**299 Notional payments by the Commonwealth**

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

**300 Compensation for acquisition of property**

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

**301 Native title rights not affected**

This Act does not affect the operation of the *Native Title Act 1993*.

**302 Racial Discrimination Act not affected**

This Act does not affect the operation of the *Racial Discrimination Act 1975*.

Section 303

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1     **303 Additional effect of this Act and the regulations—introduced**  
2                     **animal emissions avoidance projects**

- 3             (1) Without limiting their effect apart from this section, this Act and  
4             the regulations also have effect as provided by this section.
- 5             (2) This Act and the regulations also have the effect they would have if  
6             each reference in this Act and the regulations to an introduced  
7             animal emissions avoidance project were, by express provision,  
8             confined to an introduced animal emissions avoidance project that:  
9                 (a) contributes; or  
10                (b) is likely to contribute;  
11             to the fulfilment of Australia’s obligations under paragraph (h) of  
12             Article 8 of the Biodiversity Convention.

13     **304 Prescribing matters by reference to other instruments**

- 14             (1) The regulations may make provision in relation to a matter by  
15             applying, adopting or incorporating, with or without modification,  
16             a matter contained in an instrument or writing:  
17                 (a) as in force or existing at a particular time; or  
18                 (b) as in force or existing from time to time.
- 19             (2) Subsection (1) has effect despite anything in subsection 14(2) of  
20             the *Legislative Instruments Act 2003*.
- 21             (3) If the regulations make provision in relation to a matter by  
22             applying, adopting or incorporating, with or without modification,  
23             a matter contained in an instrument or writing, the Administrator  
24             must ensure that the text of the matter applied, adopted or  
25             incorporated is published on the Administrator’s website.
- 26             (4) Subsection (3) does not apply if the publication would infringe  
27             copyright.

28     **305 Administrative decisions under the regulations**

29             The regulations may make provision in relation to a matter by  
30             conferring a power to make a decision of an administrative  
31             character on the Administrator.

**306 Reviews of operation of this Act etc.**

- 1  
2 (1) The Minister must cause to be conducted reviews of the operation  
3 of:  
4 (a) this Act; and  
5 (b) the regulations; and  
6 (c) other instruments made under this Act.

*Public consultation*

- 7  
8 (2) A review under subsection (1) must make provision for public  
9 consultation.

*Report*

- 10  
11 (3) The Minister must cause to be prepared a report of a review under  
12 subsection (1).  
13 (4) The Minister must cause copies of a report under subsection (3) to  
14 be tabled in each House of the Parliament within 15 sitting days of  
15 that House after the completion of the preparation of the report.

*First review*

- 16  
17 (5) The report of the first review under subsection (1) must be tabled  
18 under subsection (4) before the end of 31 December 2014.

*Subsequent reviews*

- 19  
20 (6) The report of each subsequent review under subsection (1) must be  
21 tabled under subsection (4) within 3 years after the report of the  
22 previous review was tabled under subsection (4).

**307 Regulations**

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