



# **National Greenhouse and Energy Reporting Act 2007**

**No. 175, 2007**

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

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



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# **National Greenhouse and Energy Reporting Act 2007**

**No. 175, 2007**

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

*[Assented to 28 September 2007]*

The Parliament of Australia enacts:

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Section 1

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## Part 1—Introduction

### Division 1—Preliminary

#### 1 Short title

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

#### 2 Commencement

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

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

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

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

#### 3 Object

The object of this Act is to introduce a single national reporting framework for the reporting and dissemination of information

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related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations to:

- (a) underpin the introduction of an emissions trading scheme in the future; and
- (b) inform government policy formulation and the Australian public; and
- (c) meet Australia's international reporting obligations; and
- (d) assist Commonwealth, State and Territory government programs and activities; and
- (e) avoid the duplication of similar reporting requirements in the States and Territories.

#### **4 Constitutional basis for Act**

This Act relies on:

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

#### **5 Act excludes some State and Territory laws**

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

- (a) that provides for the reporting or disclosure of information related to:
  - (i) greenhouse gas emissions; or
  - (ii) greenhouse gas projects; or
  - (iii) energy consumption; or
  - (iv) energy production; and
- (b) that the regulations provide is a law, or part of a law, to which this section applies;

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

#### **6 Application to external Territories, Exclusive Economic Zone and innocent passage**

- (1) This Act extends to all the external Territories.

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- (2) This Act extends to Australia's exclusive economic zone.

Note: The application of this Act to the exclusive economic zone is limited, through the definitions of *facility* and *greenhouse gas project*, to oil or gas extraction activities.

- (3) This Act does not apply to the extent that its application would be inconsistent with a right of innocent passage being exercised by a foreign ship.

Note: *Innocent passage* is defined in section 7.

## **Division 2—Interpretation**

### **7 Definitions**

In this Act:

*authorised officer* means an officer appointed under section 57.

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

*civil penalty provision* has the meaning given by section 29.

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

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

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

*court* means:

- (a) the Federal Court of Australia; or
- (b) the Federal Magistrates Court.

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

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

*exclusive economic zone* has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*external auditor* means an individual who:

- (a) is not an officer, employee or agent of the corporation or of one of the members of the corporation's group; and
- (b) has professional expertise and qualifications which meet the requirements specified in regulations made for the purposes of this paragraph.

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*facility* has the meaning given by section 9.

*Greenhouse and Energy Data Officer* means the Greenhouse and Energy Data Officer established under section 49.

*greenhouse and energy information* means information reported to the Greenhouse and Energy Data Officer under this Act or information obtained by a person whilst performing duties under this Act or the regulations.

*greenhouse gas* means:

- (a) carbon dioxide; or
- (b) methane; or
- (c) nitrous oxide; or
- (d) sulphur hexafluoride; or
- (e) a hydrofluorocarbon of a kind specified in the regulations; or
- (f) a perfluorocarbon of a kind specified in the regulations.

*greenhouse gas project* means an activity or series of activities:

- (a) designed to remove or reduce the emission of greenhouse gases; and
  - (b) which meet the requirements specified in the regulations;
- but does not include an activity, or a series of activities, in the exclusive economic zone, except to the extent that it is an oil or gas extraction activity or a series of oil or gas extraction activities.

*group* has the meaning given by subsection 8(1).

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

*industry sector* has the meaning given by the regulations.

*innocent passage* has the meaning it has under the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982.

Note: For the Convention on the Law of the Sea see the Schedule to the *Seas and Submerged Lands Act 1973*.

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

**member** has the meaning given by subsection 8(2).

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

**oil or gas extraction activity** means:

- (a) any activity involving extraction of, or exploration for, oil or gas; and
- (b) any activity, of a kind specified in the regulations, that is connected with such extraction or exploration.

**operational control** has the meaning given by section 11.

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

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

**registered corporation** means a corporation that is registered under Division 3 of Part 2.

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

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

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

## **8 Group and members of a group**

- (1) A controlling corporation's **group** consists of the following entities:
  - (a) the controlling corporation;
  - (b) the controlling corporation's subsidiaries covered by subsection (3) (if any);
  - (c) the joint ventures covered by subsection (4) (if any);
  - (d) the partnerships covered by subsection (5) (if any).However, paragraph (b) does not apply if the controlling corporation is not incorporated in Australia.

**Section 8**

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- (2) The *members* of the group are the entities mentioned in subsection (1) (other than the controlling corporation's subsidiaries if the controlling corporation is not incorporated in Australia).
- (3) A subsidiary of the controlling corporation is covered by this section unless:
  - (a) the subsidiary is also a subsidiary of another body corporate because the other body corporate meets the requirement in subparagraph 46(a)(i) or (ii) of the *Corporations Act 2001* in relation to the subsidiary; and
  - (b) the other body corporate is not a member of the group (including by reason of a previous operation of this subsection).
- (4) A joint venture is covered by this subsection if a member of the group (other than a joint venture or partnership) is a participant in the joint venture and the participants in the joint venture have either:
  - (a) nominated that member as the responsible entity for the joint venture in accordance with regulations made for the purposes of subsection (6); or
  - (b) not nominated an entity as the responsible entity for the joint venture in accordance with those regulations.
- (5) A partnership is covered by this subsection if a member of the group (other than a joint venture or partnership) is a partner in the partnership and the partners in the partnership have either:
  - (a) nominated that member as the responsible entity for the partnership in accordance with regulations made for the purposes of subsection (6); or
  - (b) not nominated an entity as the responsible entity for the partnership in accordance with those regulations.
- (6) The regulations may establish rules under which:
  - (a) participants in a joint venture may make, and revoke, nominations for the purposes of subsection (4); and
  - (b) partners in a partnership may make, and revoke, nominations for the purposes of subsection (5).

## 9 Facilities

- (1) A **facility** is an activity, or a series of activities (including ancillary activities), that involve the production of greenhouse gas emissions, the production of energy or the consumption of energy and that:
  - (a) form a single undertaking or enterprise and meet the requirements of the regulations; or
  - (b) are declared by the Greenhouse and Energy Data Officer to be a facility under section 54;but does not include an activity, or a series of activities, in the exclusive economic zone, except to the extent that it is an oil or gas extraction activity or a series of oil or gas extraction activities.
- (2) Paragraph (1)(a) does not apply if a declaration of a kind referred to in paragraph (1)(b) is in force.
- (3) For the purposes of paragraph (1)(a), the activity or activities constituting the undertaking or enterprise must not be attributable to more than one industry sector.
- (4) Regulations made for the purposes of paragraph (1)(a) may specify:
  - (a) the circumstances in which an activity or activities (including ancillary activities) will form part of a single undertaking or enterprise; and
  - (b) what activities are attributable to particular industry sectors.

## 10 Emissions, energy production and energy consumption etc.

- (1) References to the following:
  - (a) **emissions** of greenhouse gas;
  - (b) **reduction** of greenhouse gas emissions;
  - (c) **removal** of greenhouse gas;
  - (d) **offsets** of greenhouse gas emissions;
  - (e) **production** of energy;
  - (f) **consumption** of energy;have the meaning specified by the regulations.

## Section 11

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- (2) Regulations made for the purposes of paragraph (1)(a) may specify a meaning of emissions of greenhouse gas that includes emissions related to the consumption of specified kinds of energy.
- (3) The Minister may determine, by legislative instrument, methods, or criteria for methods, by which the amounts of the emissions, reduction, removal, offsets, production or consumption are to be measured for the purposes of this Act and may specify:
  - (a) different methods or criteria for different industry sectors;  
and
  - (b) different methods or criteria depending on the circumstances in which the emissions, reduction, removal, offsets, production or consumption occurred.

### **11 Operational control**

- (1) A controlling corporation or another member of the corporation's group has *operational control* over a facility if:
  - (a) it has the authority to introduce and implement any or all of the following for the facility:
    - (i) operating policies;
    - (ii) health and safety policies;
    - (iii) environmental policies;and meets the requirements of the regulations; or
  - (b) the Greenhouse and Energy Data Officer declares the corporation or member to have operational control of the facility under section 55.
- (2) Paragraph (1)(a) does not apply if a declaration of a kind referred to in paragraph (1)(b) is in force.
- (3) For the purposes of this Act, only one such corporation or member can have operational control over a facility at any one time.
- (4) If more than one such corporation or member could satisfy paragraph (1)(a) at any one time, then the corporation or member that has the greatest authority to introduce and implement the policies mentioned in subparagraphs (1)(a)(i) and (iii) is taken, for the purposes of this Act, to have operational control over the facility.



## **Part 2—Registration**

### **Division 1—Applying for registration**

#### **12 Obligation to apply to register**

- (1) A controlling corporation must apply, in accordance with this section, to be registered under Division 3 if:
  - (a) the corporation's group meets one or more of the thresholds under section 13 for a financial year (the *trigger year*) ending on or after 30 June 2009; and
  - (b) the corporation is not registered under Division 3 on 31 August in the financial year after the trigger year.

Civil penalty: 2,000 penalty units.

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

- (2) The application must be made during the period:
  - (a) beginning on 1 July in the trigger year; and
  - (b) ending on 31 August in the financial year after the trigger year.

#### **13 Thresholds**

- (1) A controlling corporation's group meets a *threshold* for a financial year if in that year:
  - (a) the total amount of greenhouse gases emitted from the operation of facilities under the operational control of entities that are members of the group has a carbon dioxide equivalence of:
    - (i) if the financial year starts on 1 July 2008—125 kilotonnes or more; or
    - (ii) if the financial year starts on 1 July 2009—87.5 kilotonnes or more; or

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**Division 1** Applying for registration

**Section 13**

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- (iii) if the year is a later financial year—50 kilotonnes or more; or
  - (b) the total amount of energy produced from the operation of facilities under the operational control of entities that are members of the group is:
    - (i) if the financial year starts on 1 July 2008—500 terajoules or more; or
    - (ii) if the financial year starts on 1 July 2009—350 terajoules or more; or
    - (iii) if the year is a later financial year—200 terajoules or more; or
  - (c) the total amount of energy consumed from the operation of facilities under the operational control of entities that are members of the group is:
    - (i) if the financial year starts on 1 July 2008—500 terajoules or more; or
    - (ii) if the financial year starts on 1 July 2009—350 terajoules or more; or
    - (iii) if the year is a later financial year—200 terajoules or more; or
  - (d) an entity that is a member of the group has operational control of a facility the operation of which during the year causes:
    - (i) emission of greenhouse gases that have a carbon dioxide equivalence of 25 kilotonnes or more; or
    - (ii) production of energy of 100 terajoules or more; or
    - (iii) consumption of energy of 100 terajoules or more.
- (2) If a member of a controlling corporation's group has operational control of a facility for a number of, but not all, days in a financial year (the *control days*), subparagraphs (1)(d)(i) to (iii) have effect as though each threshold were replaced by the amount worked out using the following formula:

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

#### **14 Applying to register in relation to greenhouse gas project**

A controlling corporation that is not required to apply under section 12 may apply to be registered under Division 3 if the corporation, or one or more members of the corporation's group, are undertaking or proposing to undertake a greenhouse gas project.

#### **15 Requirements for applications**

- (1) An application under section 12 or 14 must:
  - (a) be made to the Greenhouse and Energy Data Officer; and
  - (b) identify the controlling corporation; and
  - (c) contain any other information required by the regulations; and
  - (d) be in the form (if any) specified in the regulations.
- (2) Regulations made for the purposes of paragraph (1)(c) must only require the following kinds of information:
  - (a) information that is reasonably necessary for assessing applications made under this section;
  - (b) information that would be required by subsection 16(4) to be entered on the Register if the controlling corporation were registered under Division 3.

## **Division 2—The Register**

### **16 The Register**

- (1) The Greenhouse and Energy Data Officer must cause a Register to be kept for the purposes of this Act.
- (2) The Register is called the National Greenhouse and Energy Register.
- (3) The Greenhouse and Energy Data Officer may cause the contents of part or all of the Register to be made available to the public by electronic or other means.
- (4) The Greenhouse and Energy Data Officer must cause the following information, and only that information, to be entered on the Register:
  - (a) the name of each corporation that the Greenhouse and Energy Data Officer must register under Division 3;
  - (b) any other matters, required by the regulations, that relate to the following:
    - (i) the identity of the controlling corporation and members of the corporation's group;
    - (ii) whether the corporation is required to be registered under section 12 or has applied for registration under section 14;
    - (iii) whether the corporation has complied with provisions of this Act;
    - (iv) information that is published under section 24.

## **Division 3—Registration and deregistration of corporations**

### **17 Registration of corporations**

- (1) The Greenhouse and Energy Data Officer must register a corporation under this Division if:
  - (a) the Greenhouse and Energy Data Officer is satisfied that section 12 requires the corporation to apply for registration; and
  - (b) the corporation has applied for registration in accordance with section 15.
- (2) The Greenhouse and Energy Data Officer may register a corporation under this Division if:
  - (a) the Greenhouse and Energy Data Officer is satisfied that section 14 permits the corporation to apply for registration; and
  - (b) the corporation has applied for registration in accordance with section 15.
- (3) The Greenhouse and Energy Data Officer must notify the corporation, in writing, of his or her decision on the application.
- (4) The corporation is registered under this Division when the Greenhouse and Energy Data Officer has entered the name of the corporation on the Register.

### **18 Deregistration of corporations**

- (1) A registered corporation may apply to the Greenhouse and Energy Data Officer to be deregistered.
  - (2) The application must:
    - (a) contain information required by the regulations; and
    - (b) be in the form (if any) specified in the regulations.
  - (3) The Greenhouse and Energy Data Officer must remove the name of the corporation from the Register if the Greenhouse and Energy
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**Part 2** Registration

**Division 3** Registration and deregistration of corporations

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Data Officer is satisfied that the registered corporation's group is not likely to meet any of the thresholds under section 13 for:

- (a) the financial year in which the application is made; and
  - (b) the next 2 financial years.
- (4) The Greenhouse and Energy Data Officer must notify the corporation, in writing, of his or her decision on the application.
- (5) The corporation ceases to be registered under this Division when the Greenhouse and Energy Data Officer has removed its name from the Register.

**Part 3—Obligations of registered corporations etc.****19 Report to be given to Greenhouse and Energy Data Officer**

(1) A registered corporation must, in accordance with this section and in respect of each financial year mentioned in subsection (2), provide a report to the Greenhouse and Energy Data Officer relating to the:

- (a) greenhouse gas emissions; and
- (b) energy production; and
- (c) energy consumption;

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

Civil penalty: 2,000 penalty units.

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

Note 2: Under section 20 the Greenhouse and Energy Data Officer may determine that a person other than the registered corporation provide information required by this section.

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

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

- (a) the corporation's trigger year (within the meaning of paragraph 12(1)(a)); and
- (b) any financial year in which the corporation is registered at the end of that year.

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

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- (a) greenhouse gas emissions; and
  - (b) energy production; and
  - (c) energy consumption; and
- from the operation of the facility during the part of that year.
- (4) A member of the corporation's group (other than the registered corporation) may provide part of the report referred to in subsection (1) if the part relates to facilities for which that member has operational control.
  - (5) If a part or parts of a report relating to one or more facilities are provided in accordance with subsection (4) for a financial year, the report by the registered corporation under subsection (1) in respect of that year need only, in relation to any such facilities, specify the member of the corporation's group that provided the part or parts of the report in relation to those facilities.
  - (6) A report or part of a report under this section must:
    - (a) be given in a manner and form approved by the Greenhouse and Energy Data Officer; and
    - (b) be based on methods determined by the Minister under subsection 10(3), or methods which meet criteria determined by the Minister under that subsection; and
    - (c) include any information specified by the regulations for the purposes of this paragraph; and
    - (d) be given to the Greenhouse and Energy Data Officer before the end of 4 months after the end of the financial year.
  - (7) Regulations made for the purposes of paragraph (6)(c) may specify different requirements for different circumstances.
  - (8) In particular, and without limiting subsection (7), the regulations may specify different requirements for registered corporations that:
    - (a) do not meet any threshold; or
    - (b) do not meet specified thresholds;for a financial year to which a report relates.
  - (9) Regulations made for the purposes of paragraph (6)(c) may also specify information that a State or Territory has requested the Greenhouse and Energy Data Officer to collect.
-



**20 Liability of other persons to provide certain information**

- (1) Section 19 does not require a registered corporation to include in a report under that section information of a kind that the Greenhouse and Energy Data Officer determines under subsection (3) is to be provided by another person.
- (2) The registered corporation or the other person may apply, in the manner and form specified in the regulations, to the Greenhouse and Energy Data Officer for a determination under subsection (3).
- (3) The Greenhouse and Energy Data Officer may, if satisfied that:
  - (a) information that the registered corporation would, but for this section, be required to include in a report under section 19 is information that:
    - (i) is not in the possession or under the control of the registered corporation; and
    - (ii) is in the possession or under the control of another person with whom the registered corporation has a contractual relationship; and
  - (b) the registered corporation:
    - (i) is not entitled to acquire the information from the other person; or
    - (ii) is entitled to acquire the information from the other person only because the other person is obliged to assist the corporation to comply with this Act; and
  - (c) the other person has refused to give the information to the registered corporation; and
  - (d) any other requirements specified in the regulations have been met;determine, in writing, that the information is to be provided by the other person.
- (4) The other person must, in accordance with any requirements specified in the regulations, provide that information to the Greenhouse and Energy Data Officer on or before the day specified in the determination.

**Civil penalty:**

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

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(b) otherwise—2,000 penalty units.

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

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

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

### 21 Reports relating to greenhouse gas projects

- (1) A registered corporation may, in respect of a financial year or such longer period as the Greenhouse and Energy Data Officer allows, provide a report to the Greenhouse and Energy Data Officer relating to the:
- (a) reduction of greenhouse gas emissions; and
  - (b) removals of greenhouse gases; and
  - (c) offsets of greenhouse gas emissions;
- from a greenhouse gas project that the corporation, or one or more members of the corporation's group, have undertaken during that year or period.
- (2) If a registered corporation or a member of its group undertakes a greenhouse gas project for part of a financial year or period, the report under subsection (1) in relation to the project for that year or period must only relate to the:
- (a) reduction of greenhouse gas emissions; and
  - (b) removal of greenhouse gases; and
  - (c) offsets of greenhouse gas emissions;
- from the project which are attributable to that part of the year or period.
- (3) A report must not be provided under subsection (1) unless the greenhouse gas project satisfies the requirements specified in the regulations made for the purposes of the definition of **greenhouse gas project** in section 7 for that type of greenhouse gas project.

- (4) A report must:
- (a) be based on methods determined by the Minister under subsection 10(3), or methods which meet criteria determined by the Minister under that subsection; and
  - (b) include any information specified by the regulations for the purposes of this paragraph.

Civil penalty: 1,000 penalty units.

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

- (5) Without limiting paragraph (4)(b), regulations made for the purposes of that paragraph may specify different requirements for different types of greenhouse gas projects and may require information relating to the:
- (a) greenhouse gas emissions; and
  - (b) energy production; and
  - (c) energy consumption;
- from undertaking the greenhouse gas project.
- (6) A report is taken not to be a report under this section unless:
- (a) it is given in a manner and form approved by the Greenhouse and Energy Data Officer; and
  - (b) it is given to the Greenhouse and Energy Data Officer within a period specified in the regulations; and
  - (c) subsections (3) and (4) have been complied with.

## **22 Records to be kept**

- (1) A registered corporation must keep records of the activities of the members of its group that:
- (a) allow it to report accurately under this Act; and
  - (b) enable the Greenhouse and Energy Data Officer to ascertain whether the corporation has complied with its obligations under this Act; and
  - (c) comply with the requirements of subsection (3) and the regulations made for the purposes of subsection (4).

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Civil penalty: 1,000 penalty units.

- (2) A person required to provide information under section 20 must keep records of the person's activities that:
- (a) allow the person to provide information accurately under this Act; and
  - (b) enable the Greenhouse and Energy Data Officer to ascertain whether the person has complied with its obligations under this Act; and
  - (c) comply with the requirements of subsection (3) and the regulations made for the purposes of subsection (4).

Civil penalty:

- (d) for an individual—200 penalty units; or
  - (e) otherwise—1,000 penalty units.
- (3) The corporation or person must retain the records for 7 years from the end of the year in which the activities take place.
- (4) The regulations may specify requirements relating to:
- (a) the kinds of records; and
  - (b) form of records;
- that must be kept under subsection (1) or (2).

## Part 4—Disclosure of information

### 23 Secrecy

- (1) A person mentioned in subsection (2) commits an offence if:
- (a) the person obtains greenhouse and energy information in his or her capacity as a person mentioned in subsection (2); and
  - (b) the person discloses the information to another person otherwise than under, or for the purposes of:
    - (i) this Act or the performance of duties in relation to this Act; or
    - (ii) another law of the Commonwealth or the performance of duties in relation to another law of the Commonwealth; or
    - (iii) if the person is an employee of a State or a Territory or of an authority of a State or a Territory, or is appointed to an office under a law of a State or a Territory—a law of that State or Territory or the performance of duties in relation to a law of that State or Territory; or
    - (iv) if the person is an employee of the Commonwealth or of an authority of the Commonwealth, or is appointed to an office under a law of the Commonwealth—a law of a State or Territory or the performance of duties in relation to a law of a State or Territory.

Penalty: Imprisonment for 2 years.

Note: The same conduct may be an offence against both this section and section 70 of the *Crimes Act 1914*.

- (2) This section applies to a person who is or was:
- (a) the Greenhouse and Energy Data Officer; or
  - (b) a member of the staff of the Greenhouse and Energy Data Officer; or
  - (c) an authorised officer; or
  - (d) an external auditor; or

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- (e) an employee of the Commonwealth, a State or a Territory or of an authority of the Commonwealth, a State or a Territory; or
- (f) a person appointed to an office under a law of the Commonwealth, a State or a Territory; or
- (g) a person to whom information is disclosed under section 26.

**24 Publishing of information**

- (1) The Greenhouse and Energy Data Officer must publish on a website, by 28 February in a financial year, totals of:
  - (a) greenhouse gas emissions; and
  - (b) energy production; and
  - (c) energy consumption;reported in relation to a registered corporation's group for the previous financial year.
- (2) The Greenhouse and Energy Data Officer may publish on a website information relating to the greenhouse gas projects undertaken by a registered corporation if the information satisfies the requirements of regulations made for the purposes of this subsection.
- (3) The totals mentioned in subsection (1) may be published in either or both of the following ways:
  - (a) disaggregated by each member of the corporation's group;
  - (b) as falling within a particular range of values.
- (4) The Greenhouse and Energy Data Officer must not publish information mentioned in subsection (1), whether in a form mentioned in subsection (3) or otherwise, unless:
  - (a) the corporation's group meets a threshold mentioned in paragraph 13(1)(a) for the financial year; and
  - (b) no application has been made under section 25, or if such an application has been made, it has been refused.
- (5) A State or Territory, or an authority of a State or Territory, may publish information disclosed to it under subsection 27(1) if:

- (a) the publication of the information is required under a law of the State or Territory; and
  - (b) the Greenhouse and Energy Data Officer has agreed, in writing, to the publication of the information.
- (6) A person mentioned in subsection 26(1) may publish information disclosed to it under that subsection if the information is in an aggregated form that does not disclose, either directly or indirectly, information about a specific:
- (a) registered corporation; or
  - (b) registered corporation's group; or
  - (c) facility;
- and the Greenhouse and Energy Data Officer has agreed, in writing, for the information to be published.

## **25 Requests for information not to be published**

- (1) A registered corporation, or a person required to provide information under section 20, may apply to the Greenhouse and Energy Data Officer requesting information not be published if the information reveals, or could be capable of revealing:
- (a) trade secrets; or
  - (b) any other matter having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
- about a specific facility, technology or corporate initiative relating to the corporation or the person.
- (2) The application must:
- (a) identify the corporation or the person; and
  - (b) identify the information that is requested not to be published; and
  - (c) be given in the manner and form approved by the Greenhouse and Energy Data Officer.
- (3) The Greenhouse and Energy Data Officer may accept the application and not publish the information if he or she is satisfied that the information would reveal, or would be capable of revealing, information of a kind specified in subsection (1).

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- (4) The Greenhouse and Energy Data Officer must notify an applicant, in writing, of a decision to accept or refuse an application under this section.

**26 Information may be disclosed to specified persons or bodies**

- (1) The Greenhouse and Energy Data Officer, or a person authorised by the Greenhouse and Energy Data Officer, may disclose greenhouse and energy information to:
- (a) a Commonwealth Minister; or
  - (b) a Secretary of a Department or the head of an authority of the Commonwealth; or
  - (c) an APS employee or an employee of an authority of the Commonwealth;

if the person is responsible for administering a program or collecting statistics relating to greenhouse gas emissions, energy consumption or energy production and the person is specified in regulations made for the purposes of this section.

- (2) The Greenhouse and Energy Data Officer, or a person authorised by the Greenhouse and Energy Data Officer, may disclose greenhouse and energy information to a person providing services to the Commonwealth, or an authority of the Commonwealth, in relation to the administration of such a program or the collection of such statistics.
- (3) The Greenhouse and Energy Data Officer, or a person authorised by the Greenhouse and Energy Data Officer, may disclose greenhouse and energy information to:
- (a) a court; or
  - (b) the Administrative Appeals Tribunal;
- for the purposes of, or in connection with, court or tribunal proceedings, or proposed or possible court or tribunal proceedings under this Act.
- (4) The Greenhouse and Energy Data Officer, or a person authorised by the Greenhouse and Energy Data Officer, may disclose greenhouse and energy information to another person for the purposes of facilitating reviews of Australia's compliance with its



international obligations relating to reporting of greenhouse gas emissions, production of energy and consumption of energy.

- (5) The Greenhouse and Energy Data Officer may make disclosure of information under subsection (2) subject to conditions, including:
- (a) restrictions on disclosure of the information to other persons; and
  - (b) security measures required in relation to the confidentiality of the information.

## **27 Information may be disclosed to States and Territories**

- (1) The Greenhouse and Energy Data Officer, or a person authorised by the Greenhouse and Energy Data Officer, must disclose greenhouse and energy information to a State or Territory or an authority of a State or Territory if:
- (a) it is information mentioned in subsection 19(9); or
  - (b) it is information relating to facilities that are wholly or partly located in the State or Territory.
- (1A) However, the Greenhouse and Energy Data Officer may refuse to disclose information under this section if satisfied that there would not be adequate security measures in place in relation to the confidentiality of the information.
- (2) The Greenhouse and Energy Data Officer may make disclosure of information under this section subject to conditions including:
- (a) restrictions on disclosure of the information to other persons; and
  - (b) security measures required in relation to the confidentiality of the information; and
  - (c) the State, Territory, or authority not requiring the reporting or disclosure of other information of a kind similar to greenhouse and energy information.

## **28 Corporation may request information be disclosed**

- (1) A registered corporation may, by written notice, request the Greenhouse and Energy Data Officer to disclose greenhouse and energy information related to the corporation.

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- (2) The notice must:
  - (a) specify the information to be disclosed; and
  - (b) specify the person or persons to whom the information is to be disclosed; and
  - (c) be given in the manner and form approved by the Greenhouse and Energy Data Officer.
- (3) The Greenhouse and Energy Data Officer may, within a reasonable period after being given the notice, disclose the information.

## **Part 5—Enforcement**

### **Division 1—Civil penalties**

#### **Subdivision A—Civil penalty orders**

#### **29 Civil penalty provisions**

The following are *civil penalty provisions* for the purposes of this Act:

- (a) a subsection of this Act (or a section of this Act that is not divided into subsections) if the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section);
- (b) a subsection of this Act if another provision of this Act specifies that the subsection is a civil penalty provision.

#### **30 Continuing contraventions**

- (1) If an act or thing is required, under a civil penalty provision of this Act, to be done within a particular period, or before a particular time, then the obligation to do that act or thing continues (even if the period has expired or the time has passed) until the act or thing is done.
- (2) If, under section 12, 19, 20 or 73, an act or thing is required to be done within a particular period, or before a particular time, and a person fails to comply with that requirement, the person is liable for a civil penalty for each day that the person fails to comply.

Civil penalty:

- (a) for failure to meet a requirement under section 12, 19 or 20—100 penalty units per day; or
  - (b) for failure to meet a requirement under section 73—10 penalty units per day.
- (3) To avoid doubt, a person’s failure to comply with such a requirement on a particular day is taken, for the purposes of this

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Act, not to be the same conduct as the person's failure to comply with that requirement on a different day.

**31 Court may order person to pay pecuniary penalty for contravening civil penalty provision**

*Application for order*

- (1) Within 6 years of a person contravening a civil penalty provision, the Greenhouse and Energy Data Officer may apply, on behalf of the Commonwealth, to a Court for an order that the person pay the Commonwealth a pecuniary penalty.

*Court may order person to pay pecuniary penalty*

- (2) If the Court is satisfied that the person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate.

*Maximum pecuniary penalty*

- (3) The pecuniary penalty must not exceed the sum of:
  - (a) the relevant amount specified for the civil penalty provision; and
  - (b) the amount (if any) for which the person is liable under section 30 at the time the Court makes the order.

*Determining amount of pecuniary penalty*

- (4) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

*Conduct contravening more than one civil penalty provision*

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

**32 Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**33 Persons involved in contravening civil penalty provision**

- (1) A person must not:
- (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) be in any way directly or indirectly knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (d) conspire to contravene a civil penalty provision.
- (2) This Division applies to a person who contravenes subsection (1) in relation to a civil penalty provision as if the person had contravened the provision.

**34 Recovery of a pecuniary penalty**

If a Court orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Commonwealth may enforce the order as if it were a judgment of the Court.

## **Subdivision B—Civil penalty proceedings and criminal proceedings**

### **35 Civil proceedings after criminal proceedings**

A Court must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

### **36 Criminal proceedings during civil proceedings**

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

### **37 Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a pecuniary penalty order has been made against the person.

### **38 Evidence given in proceedings for penalty not admissible in criminal proceedings**

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

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order

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against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to criminal proceedings in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

## **Division 2—Infringement notices**

### **39 When an infringement notice can be given**

- (1) If the Greenhouse and Energy Data Officer has reasonable grounds to believe that a person has contravened a civil penalty provision, the Greenhouse and Energy Data Officer may give to the person an infringement notice relating to the alleged contravention.
- (2) An infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice may be given to a person in respect of:
  - (a) 2 or more alleged contraventions of a civil penalty provision;  
and
  - (b) alleged contraventions of 2 or more civil penalty provisions.However, the notice must not require the person to pay more than one penalty in respect of the same conduct.

### **40 Matters to be included in an infringement notice**

- (1) An infringement notice must:
  - (a) identify the person to whom the notice is given; and
  - (b) set out brief details of:
    - (i) the alleged contravention of the civil penalty provision;  
or
    - (ii) if the infringement notice relates to 2 or more alleged contraventions of a civil penalty provision or alleged contraventions of 2 or more civil penalty provisions—  
each alleged contravention; and
  - (c) contain a statement to the effect that proceedings will not be brought under this Part in relation to the alleged contravention or contraventions if the penalty specified in the notice is paid to the Greenhouse and Energy Data Officer, on behalf of the Commonwealth, within:
    - (i) 28 days after the notice is given; or



- (ii) if the Greenhouse and Energy Data Officer allows a longer period—that longer period; and
- (d) contain a statement to the effect that the person to whom the notice is given may choose not to pay the penalty and, if the person does so, proceedings may be brought under this Part in relation to the alleged contravention or contraventions; and
- (e) give an explanation of how payment of the penalty is to be made; and
- (f) set out such other matters (if any) as are specified by the regulations.

Note: For the amount of penalty, see section 41.

- (2) For the purposes of paragraph (1)(b), the brief details must include the following information in relation to each alleged contravention:
  - (a) the date, time and place of the contravention;
  - (b) the civil penalty provision that was allegedly contravened.

#### **41 Amount of penalty**

The penalty to be specified in an infringement notice relating to a person's alleged contravention of a civil penalty provision must be a pecuniary penalty equal to one-fifth of the maximum penalty that a Court could impose on the person for that contravention.

Note: To work out this maximum penalty, see subsection 31(3).

#### **42 Withdrawal of an infringement notice**

- (1) This section applies if an infringement notice is given to a person.
- (2) The Greenhouse and Energy Data Officer may, by written notice given to the person, withdraw the infringement notice.

*Refund of penalty if infringement notice withdrawn*

- (3) If:
  - (a) the penalty specified in the infringement notice is paid; and
  - (b) the infringement notice is withdrawn after the penalty is paid;the Commonwealth is liable to refund the penalty.

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**43 Paying the penalty in accordance with the notice**

- (1) This section applies if:
  - (a) an infringement notice relating to an alleged contravention of a civil penalty provision is given to a person; and
  - (b) the penalty is paid in accordance with the infringement notice; and
  - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged contravention is discharged.
- (3) The payment of the penalty is not to be taken as an admission by the person of liability for the alleged contravention.
- (4) Proceedings under this Part may not be brought against the person for the alleged contravention.

**44 Effect of this Division on civil proceedings**

This Division does not:

- (a) require an infringement notice to be given in relation to an alleged contravention of a civil penalty provision; or
- (b) affect the liability of a person to have proceedings under this Part brought against the person for an alleged contravention of a civil penalty provision if:
  - (i) the person does not comply with an infringement notice relating to the contravention; or
  - (ii) an infringement notice relating to the contravention is not given to the person; or
  - (iii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or
- (c) limit a Court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings under this Part to have contravened a civil penalty provision.

## **Division 3—Enforceable undertakings**

### **45 Acceptance of undertakings relating to contraventions**

- (1) The Greenhouse and Energy Data Officer may accept any of the following undertakings given by a person:
  - (a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act or the regulations;
  - (b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act or the regulations;
  - (c) a written undertaking that the person will take specified action directed towards ensuring that the person:
    - (i) does not commit a contravention of this Act or the regulations; or
    - (ii) is unlikely to commit a contravention of this Act or the regulations;  
in the future;
  - (d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Greenhouse and Energy Data Officer.
- (4) The Greenhouse and Energy Data Officer may, by written notice given to the person, cancel the undertaking.
- (5) The undertaking may be published on an appropriate website.

### **46 Enforcement of undertakings**

- (1) If:
  - (a) a person has given an undertaking under section 45; and
  - (b) the undertaking has not been withdrawn or cancelled; and

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- (c) the Greenhouse and Energy Data Officer considers that the person has breached the undertaking;
- the Greenhouse and Energy Data Officer may apply to a Court for an order under subsection (2).
- (2) If the Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Greenhouse and Energy Data Officer, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

## **Division 4—Liability of chief executive officers of corporations**

### **47 Civil penalties for chief executive officers of corporations**

- (1) If:
  - (a) a corporation contravenes a civil penalty provision; and
  - (b) a chief executive officer of the corporation knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention;the officer contravenes this subsection.
- (2) Subsection (1) is a civil penalty provision.
- (3) Under section 31, a Court may order a person contravening subsection (1) to pay a pecuniary penalty not more than the pecuniary penalty the Court could order a corporation to pay for contravening the civil penalty provision mentioned in paragraph (1)(a).

### **48 Did a chief executive officer take reasonable steps to prevent contravention?**

- (1) For the purposes of section 47, in determining whether a chief executive officer of a corporation failed to take all reasonable steps to prevent a contravention, a Court is to have regard to:
  - (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
    - (i) that the corporation arranges regular professional assessments of the corporation's compliance with this Act or the regulations;

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- (ii) that the corporation implements any appropriate recommendations arising from such an assessment;
  - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act and the regulations in so far as those requirements affect the employees, agents or contractors concerned; and
- (b) what action (if any) the officer took when he or she became aware that the corporation was contravening this Act or the regulations.
- (2) This section does not, by implication, limit the generality of section 47.

## **Part 6—Administration**

### **Division 1—The Greenhouse and Energy Data Officer**

#### **49 Establishment**

There is to be a Greenhouse and Energy Data Officer.

#### **50 Functions**

The Greenhouse and Energy Data Officer has the following functions:

- (a) functions conferred on the Greenhouse and Energy Data Officer by this Act, the regulations or any other law of the Commonwealth; and
- (b) to do anything incidental to, or conducive to, the performance of any of the functions referred to in paragraph (a).

#### **51 Appointment**

The Greenhouse and Energy Data Officer is to be engaged under the *Public Service Act 1999*.

#### **52 Staff**

The staff necessary to assist the Greenhouse and Energy Data Officer are to be persons engaged under the *Public Service Act 1999* who are:

- (a) employed in the Department; and
- (b) made available for the purpose by the Secretary of the Department.

#### **53 Delegation**

The Greenhouse and Energy Data Officer may, by signed instrument, delegate all or any of his or her powers under this Act to an SES employee or acting SES employee.

## **Division 2—Decisions by Greenhouse and Energy Data Officer**

### **54 Greenhouse and Energy Data Officer may declare facility**

- (1) The Greenhouse and Energy Data Officer may declare that an activity or series of activities (including ancillary activities) are a facility:
  - (a) on application by a controlling corporation; or
  - (b) on his or her own initiative.
- (2) An application must:
  - (a) identify the controlling corporation; and
  - (b) identify the facility for which a declaration is sought; and
  - (c) include any other information required by the regulations; and
  - (d) be given in a manner and form approved by the Greenhouse and Energy Data Officer.
- (3) In considering making a declaration that an activity or series of activities are a facility, the Greenhouse and Energy Data Officer must have regard to:
  - (a) the matters dealt with in regulations made for the purposes of paragraph 9(1)(a); and
  - (b) the need for each facility to be distinct from, and not overlap with, activities that constitute other facilities.
- (4) The Greenhouse and Energy Data Officer must notify an applicant under paragraph (1)(a), in writing, of a decision under subsection (1) to declare a facility or refuse the application.
- (5) If the Greenhouse and Energy Data Officer makes a declaration under paragraph (1)(b), he or she must notify, in writing, the corporation, joint venture or partnership that has, or that he or she reasonably believes has, operational control of the facility to which the declaration relates.



**55 Greenhouse and Energy Data Officer may declare corporation etc. has operational control**

- (1) The Greenhouse and Energy Data Officer may declare that a controlling corporation or another member of the corporation's group has operational control of a facility:
  - (a) on application by the corporation or member; or
  - (b) on his or her own initiative.
- (2) An application must:
  - (a) identify the corporation or member; and
  - (b) identify the facility for which a declaration of operational control is sought; and
  - (c) include any other information required by the regulations; and
  - (d) be given in a manner and form approved by the Greenhouse and Energy Data Officer.
- (3) In considering making a declaration that a controlling corporation or another member of the corporation's group has operational control of a facility, the Greenhouse Energy and Data Officer must have regard to the matters dealt with in paragraph 11(1)(a) and regulations made for the purposes of that paragraph.
- (4) The Greenhouse and Energy Data Officer must notify an applicant under paragraph (1)(a), in writing, of a decision under subsection (1) to declare the corporation or member to have operational control of the facility or to refuse the application.
- (5) If the Greenhouse and Energy Data Officer makes a declaration under paragraph (1)(b), he or she must notify, in writing, the corporation or member which he or she has declared to have operational control of the facility to which the declaration relates.

## **Division 3—Review of decisions**

### **56 AAT review of decisions**

An application may be made to the Administrative Appeals Tribunal for the review of a decision of the Greenhouse and Energy Data Officer to:

- (a) not register a corporation under section 17; and
- (b) not deregister a corporation under section 18; and
- (c) make a determination under section 20; and
- (d) refuse to make a determination under section 20; and
- (e) refuse an application under section 25; and
- (ea) refuse to disclose information under section 27; and
- (f) refuse an application under section 54; and
- (g) declare a facility under paragraph 54(1)(b); and
- (h) refuse an application under section 55; and
- (i) declare that a corporation has operational control of a facility under paragraph 55(1)(b).

## **Division 4—Monitoring compliance**

### **Subdivision A—Authorised officers**

#### **57 Appointment of authorised officers**

- (1) The Greenhouse and Energy Data Officer may, in writing, appoint:
  - (a) an APS employee; or
  - (b) an employee of a State or a Territory or of an authority of a State or a Territory;to be an authorised officer for the purposes of this Division.
- (2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Greenhouse and Energy Data Officer.

Note: Section 70 of the *Crimes Act 1914* creates an offence where Commonwealth officers (including persons performing services for or on behalf of the Commonwealth) disclose information in breach of a duty of confidentiality.

#### **58 Identity cards**

- (1) The Greenhouse and Energy Data Officer must issue an identity card to an authorised officer in the form specified by the regulations. The identity card must contain a recent photograph of the authorised officer.
- (2) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be an authorised officer; and
  - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Greenhouse and Energy Data Officer.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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- (3) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

**Subdivision B—Powers of authorised officers**

**59 Entering premises to monitor compliance**

- (1) For the purposes of determining whether this Act has been complied with, an authorised officer may:
- (a) enter any premises:
    - (i) during normal business hours; or
    - (ii) if the entry is made under a warrant—at any time specified in the warrant; and
  - (b) exercise the powers set out in section 60.
- (2) An authorised officer is not authorised to enter premises under subsection (1) unless:
- (a) if the premises are business premises—the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a warrant.
- (3) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

**60 Powers of authorised officers in monitoring compliance**

- (1) The following are the powers that an authorised officer may exercise in relation to premises under section 59:
- (a) the power to search the premises for any thing on the premises that may relate to compliance with this Act;
  - (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of this Act;
  - (c) the power to examine any thing on the premises that may relate to information provided for the purposes of this Act;

- (d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;
  - (e) the power to inspect any document on the premises that may relate to information provided for the purposes of this Act;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
  - (h) the power to secure a thing that:
    - (i) is found during the exercise of monitoring powers on the premises; and
    - (ii) an authorised officer believes on reasonable grounds affords evidence of a contravention of this Act or of the commission of an offence against the *Crimes Act 1914*; until a warrant is obtained to seize the thing;
  - (i) the powers in subsections (2) and (3).
- (2) The powers that an authorised officer may exercise in relation to premises under section 59 include the power to operate equipment at premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with the equipment or is associated with it;
- contains information that is relevant to assessing the correctness of information provided under this Act.
- (3) The powers that an authorised officer may exercise in relation to premises under section 59 include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
- (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
  - (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:

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- (i) is brought to the premises for the exercise of the power;  
or
- (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
- (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

**61 Authorised officer may request persons to answer questions**

- (1) If the authorised officer was only authorised to enter premises because the occupier of the premises consented to the entry, the authorised officer may ask the occupier to:
  - (a) answer any questions related to the operation of this Act that are put by the authorised officer; and
  - (b) produce any document requested by the authorised officer that is so related.
- (2) If the authorised officer was authorised to enter the premises by a warrant, the authorised officer has power to require the occupier (if the occupier is in or on the premises), or another person who apparently represents the occupier (if that person is in or on the premises), to:
  - (a) answer any questions related to the operation of this Act that are put by the authorised officer; and
  - (b) produce any document requested by the authorised officer that is so related.
- (3) A person commits an offence if the person refuses or fails to comply with a requirement under subsection (2).

Penalty: 10 penalty units.

- (4) An individual is excused from complying with a requirement of subsection (2) if the answer to the question or the production of the document might tend to incriminate the individual or expose the individual to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

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

#### **62 Authorised officer must produce identity card on request**

An authorised officer is not entitled to exercise any powers under this Act in relation to premises if:

- (a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and
- (b) the authorised officer fails to comply with the requirement.

#### **63 Consent**

- (1) Before obtaining the consent of a person for the purposes of paragraph 59(2)(a), the authorised officer must inform the person that he or she may refuse consent.
- (2) An entry of an authorised officer because of the consent of a person is not lawful unless the person voluntarily consented to the entry.

#### **64 Announcement before entry**

An authorised officer executing a warrant must, before entering premises under the warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

#### **65 Details of warrant to be given to occupier etc. before entry**

- (1) If a warrant is being executed and the occupier of the premises in respect of which it is being executed or another person who apparently represents the occupier is present at the premises, the authorised officer must make available to that person a copy of the warrant.

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- (2) The authorised officer must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Note: Monitoring warrants are issued under section 70.

**66 Use of electronic equipment in exercising monitoring powers**

- (1) An authorised officer or a person assisting that officer may operate electronic equipment already at premises in order to exercise the powers set out in section 60 if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the authorised officer or a person assisting believes, on reasonable grounds, that:
  - (a) there is on the premises material relating to information supplied under this Act that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.
- (3) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (4) The equipment may be secured:
  - (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert;whichever first happens.
- (5) If an authorised officer or a person assisting believes, on reasonable grounds, that the expert assistance will not be available



within 24 hours, he or she may apply to a magistrate for an extension of the period.

- (6) The magistrate may extend the period of time, up to a maximum of a further 48 hours.
- (7) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension and the occupier is entitled to be heard in relation to that application.
- (8) The provisions of this Part relating to the issue of warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) In this section:

*premises* means:

- (a) premises that an authorised officer has entered, and remains on, with the consent of the occupier; and
- (b) warrant premises.

## **67 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of equipment being operated as mentioned in section 66:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the

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damage or corruption as the Commonwealth and the owner or user agree on.

- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in a Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):

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

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

**68 Occupier entitled to be present during execution of warrant**

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

**69 Occupier to provide authorised officer with all facilities and assistance**

- (1) The occupier of warrant premises, or another person who apparently represents the occupier, must provide the officer executing the warrant and any person assisting that officer with all

reasonable facilities and assistance for the effective exercise of their powers.

- (2) A person commits an offence if the person fails to comply with the obligation set out in subsection (1).

Penalty: 10 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Subdivision E—Warrants**

### **70 Monitoring warrants**

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under this Act or of determining whether this Act has been complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
- (a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance as is necessary and reasonable:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in section 60 in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and

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- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

**Subdivision F—Information gathering**

**71 Power to request information**

- (1) This section applies to a person if the Greenhouse and Energy Data Officer has reason to believe that information (the *compellable information*) relating to whether this Act has been complied with is in a person's possession, custody or control (whether held electronically or in any other form).
- (2) The Greenhouse and Energy Data Officer may, in writing, require the person to give specified compellable information to the Greenhouse and Energy Data Officer:
  - (a) within a specified period of time; and
  - (b) in a specified form or manner.
- (3) The person must not fail to comply with a requirement under this section.

Civil penalty: 50 penalty units.
- (4) The person must not, in purported compliance with a requirement under this section, give to the Greenhouse and Energy Data Officer information that is false or misleading in a material particular.

Civil penalty: 60 penalty units.
- (5) Subsection (3) does not apply to the extent that the person has a reasonable excuse. However, a person does not have a reasonable excuse merely because the information in question is:
  - (a) of a commercial nature; or
  - (b) subject to an obligation of confidentiality arising from a commercial relationship; or
  - (c) commercially sensitive.

- (6) Subsection (3) does not apply in relation to compellable information if giving the information might tend to incriminate the person or expose the person to a penalty.

## **72 Prohibitions on disclosure of information do not apply**

This Division has effect despite any law of the Commonwealth, a State or a Territory prohibiting disclosure of the information.

## **Subdivision G—External audits**

### **73 External audits—compliance**

- (1) This section applies if the Greenhouse and Energy Data Officer has reasonable grounds to suspect that a registered corporation has contravened, is contravening, or is proposing to contravene, this Act or the regulations.
- (2) The Greenhouse and Energy Data Officer may, by written notice given to the corporation, require the corporation to:
- (a) appoint:
    - (i) an external auditor of its choice; or
    - (ii) if the Greenhouse and Energy Data Officer specifies an external auditor in the notice—that external auditor; and
  - (b) arrange for the external auditor to carry out an external audit on one or more aspects of the corporation's compliance with this Act or the regulations; and
  - (c) arrange for the external auditor to give the corporation a written report setting out the results of the audit; and
  - (d) give the Greenhouse and Energy Data Officer a copy of the audit report on or before the day specified in the notice.
- (3) The notice must specify the:
- (a) matters to be covered by the audit; and
  - (b) form of the audit report and the kinds of details it is to contain.
- (4) A corporation must provide an external auditor with all reasonable facilities and assistance necessary for the effective exercise of the external auditor's duties under this Act.

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- (5) If the Greenhouse and Energy Data Officer gives a corporation written notice under subsection (2), the corporation must comply with the requirements of the notice and this section.

Civil penalty: 1,000 penalty units.

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

### **74 External audits—other**

- (1) The Greenhouse and Energy Data Officer may appoint an external auditor to carry out an external audit of a registered corporation's compliance with one or more aspects of this Act or the regulations.
- (2) The Greenhouse and Energy Data Officer must give written notice to a corporation of a decision to appoint an auditor under subsection (1). The notice must:
- (a) specify the external auditor; and
  - (b) specify the period within which the audit is to be undertaken; and
  - (c) specify the matters to be covered by the audit; and
  - (d) be given to the corporation at a reasonable time before the audit is to be undertaken.
- (3) If a corporation is given a notice under subsection (2), the corporation must arrange for the external auditor to carry out the external audit and provide the auditor with all reasonable facilities and assistance necessary for the effective exercise of the external auditor's duties under this Act.

Civil penalty: 250 penalty units.

### **75 Requirements for external auditors**

- (1) An external auditor must conduct an audit and prepare a report in accordance with guidelines determined by the Greenhouse and Energy Data Officer under subsection (2).

- (2) The Greenhouse and Energy Data Officer may determine, by legislative instrument, guidelines to be followed by external auditors when conducting audits and preparing reports under this Subdivision.

## Part 7—Miscellaneous

### 76 Modification of National Environment Protection (National Pollutant Inventory) Measure

A national environment protection measure made under section 14 of the *National Environment Protection Council Act 1994* does not apply to the extent that it requires the reporting or disclosure of information relating to:

- (a) greenhouse gas emissions; or
- (b) greenhouse gas projects.

### 77 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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[*Minister's second reading speech made in—  
House of Representatives on 15 August 2007  
Senate on 18 September 2007*]

(164/07)

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