



Australian National Registry of Emissions Units Act 2011

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About this compilation

This compilation

This is a compilation of the *Australian National Registry of Emissions Units Act 2011* that shows the text of the law as amended and in force on 14 October 2024 (the *compilation date*).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act about the Australian National Registry of Emissions Units, and for other purposes

Part 1—Preliminary

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	15 September 2011
2. Sections 3 to 97	At the same time as section 3 of the <i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> commences.	8 December 2011

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

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

3 Simplified outline

The following is a simplified outline of this Act:

- The Australian National Registry of Emissions Units is continued in existence.
- The Regulator may, in accordance with the regulations, open a Registry account in the name of a person.
- Entries may be made in Registry accounts for:
 - (a) Australian carbon credit units; and
 - (b) Kyoto units; and
 - (c) safeguard mechanism credit units.
- This Act sets out rules about dealings with:
 - (a) Kyoto units; and
 - (b) safeguard mechanism credit units.

4 Definitions

In this Act:

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

alter the Registry, includes:

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

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

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

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

business day means a day that is not:

- (a) a Saturday; or
- (b) a Sunday; or
- (c) a public holiday in the Australian Capital Territory.

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

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

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

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

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

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

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

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

commitment period reserve has the meaning given by the regulations.

Commonwealth holding account means a Commonwealth Registry account designated as a Commonwealth holding account.

Commonwealth Registry account means a Registry account kept in the name of the Commonwealth.

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

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

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

electronic notice transmitted to the Regulator has the meaning given by section 5.

eligible international emissions unit means:

- (a) a certified emission reduction (other than a temporary certified emission reduction or a long-term certified emission reduction); or
- (b) an emission reduction unit; or
- (c) a removal unit; or
- (d) a prescribed unit issued in accordance with the Kyoto rules; or
- (e) a safeguard mechanism credit unit if legislative rules made for the purposes of this paragraph specify that kind of unit.

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

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

engage in conduct means:

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

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

Federal Court means the Federal Court of Australia.

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

foreign country includes a region where:

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

foreign Kyoto registry means:

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

foreign registry means a registry that:

- (a) is located in a foreign country; and
- (b) is specified in the regulations.

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

international arrangement means an arrangement between Australia and:

- (a) a foreign government body; or
- (b) an international organisation.

issue:

- (a) in relation to an Australian carbon credit unit—has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
- (b) in relation to a safeguard mechanism credit unit—has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

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

Kyoto Party means a Party to the Kyoto Protocol.

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

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

Kyoto rules means:

- (a) the Kyoto Protocol; or
- (b) a decision of the Meeting of the Kyoto Parties; or
- (c) if a standard or other instrument, as existing from time to time, is adopted by the Meeting of the Kyoto Parties for a purpose relating to:
 - (i) the Kyoto Protocol; or
 - (ii) a decision of the Meeting of the Kyoto Parties;the standard or instrument as existing from time to time; or
- (d) if a standard or other instrument, as existing at a particular time, is adopted by the Meeting of the Kyoto Parties for a purpose relating to:
 - (i) the Kyoto Protocol; or
 - (ii) a decision of the Meeting of the Kyoto Parties;the standard or instrument as existing at that time; or

- (e) a prescribed instrument that relates to:
 - (i) the Kyoto Protocol; or
 - (ii) a decision of the Meeting of the Kyoto Parties.

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

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

Kyoto unit means:

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

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

legislative rules means rules made under section 94A.

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

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

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

mandatory cancellation account means a Commonwealth Registry account designated as the mandatory cancellation account for a particular commitment period.

Meeting of the Kyoto Parties means the Meeting of the Parties to the Climate Change Convention serving as the meeting of the Parties to the Kyoto Protocol.

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

person means any of the following:

- (a) an individual;
- (b) a body corporate;
- (c) a trust;
- (d) a corporation sole;
- (e) a body politic;
- (f) a local governing body.

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

registered holder, in relation to:

- (a) an Australian carbon credit unit; or
- (b) a Kyoto unit; or
- (c) a safeguard mechanism credit unit;

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

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

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

Regulator means the Clean Energy Regulator.

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

reviewable decision has the meaning given by section 82.

safeguard mechanism credit unit has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

Secretary means the Secretary of the Department.

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

transfer:

- (a) in relation to a Kyoto unit—has the meaning given by section 33; or
- (b) in relation to a safeguard mechanism credit unit—has the meaning given by section 48C.

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*.

voluntary cancellation account means a Commonwealth Registry account designated as the voluntary cancellation account for a particular commitment period.

5 Electronic notice transmitted to the Regulator

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

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

6 Crown to be bound

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

7 Extension to external Territories

This Act extends to every external Territory.

Part 2—Australian National Registry of Emissions Units

Division 1—Introduction

8 Simplified outline

The following is a simplified outline of this Part:

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

Division 2—Australian National Registry of Emissions Units

9 Australian National Registry of Emissions Units

- (1) The register:
 - (a) known as the Australian National Registry of Emissions Units; and
 - (b) that was in existence under the executive power of the Commonwealth immediately before the commencement of this section;continues in existence as a register under this Act under the name Australian National Registry of Emissions Units.
- (2) The Registry is to be kept by the Regulator.

Note: In this Act, **Registry** means the Australian National Registry of Emissions Units—see section 4.
- (3) The Registry is to be maintained by electronic means.
- (4) The purposes of the Registry are as follows:
 - (a) to be a registry for:
 - (i) Australian carbon credit units; and
 - (ii) safeguard mechanism credit units;
 - (b) to be Australia’s national registry for Kyoto units.

Division 3—Registry accounts

10 Registry accounts

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

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

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

11 Opening of Registry accounts—identification procedures

- (1) The regulations may prescribe identification procedures that must be carried out by the Regulator before the Regulator opens a Registry account in the name of the person.
- (2) The regulations may declare that a specified number is a **transaction limit** for the purposes of this section.
- (3) The regulations may make provision for identifying Registry accounts that are subject to a transaction limit.
- (4) An identification procedure prescribed under regulations made for the purposes of subsection (1):
 - (a) may be expressed to apply to Registry accounts that are subject to a transaction limit; or
 - (b) may be expressed to apply to Registry accounts that are not subject to a transaction limit.
- (5) The regulations may provide that, if a Registry account is subject to a particular transaction limit, the Regulator must not:
 - (a) issue to the account any:
 - (i) Australian carbon credit units; or
 - (ii) safeguard mechanism credit units; or
 - (b) comply with an instruction to transfer units to the account; if doing so would result in the account having entries for a number of units that exceeds the transaction limit.

12 Designation of Commonwealth Registry accounts

The regulations may empower the Regulator to designate a Commonwealth Registry account as an account with a name specified in the regulations.

13 Opening of new Commonwealth Registry accounts

The regulations may empower the Minister to direct the Regulator to:

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

14 Units in certain accounts cannot be transferred

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

15 Voluntary closure of Registry accounts

- (1) The regulations may make provision for and in relation to empowering the Regulator to close a Registry account kept in the name of a person.
- (2) Regulations made for the purposes of subsection (1) must not empower the Regulator to close a Registry account unless:
 - (a) the person, by written notice given to the Regulator, requests the Regulator to close the account; and
 - (b) there are no entries for any Australian carbon credit units in the account; and
 - (c) there are no entries for any Kyoto units in the account; and
 - (d) there are no entries for any safeguard mechanism credit units in the account.

16 Unilateral closure of Registry accounts etc.

- (1) The regulations may make provision for and in relation to empowering the Regulator to close a Registry account kept in the name of a person.
- (2) Regulations made for the purposes of subsection (1) must not empower the Regulator to close a Registry account unless:
 - (a) the person has contravened, or is contravening, this Part or regulations made for the purposes of this Part; and
 - (b) at least 30 days before closing the account, the Regulator gives the person a written notice:
 - (i) stating that the Regulator proposes to close the account; and
 - (ii) setting out the effect of any regulations made for the purposes of subsections (3), (4) and (6); and
 - (iii) setting out the effect of any legislative rules made for the purposes of subsection (5).

Cancellation or transfer of units

- (3) The regulations may provide that, if immediately before the Regulator closes a Registry account under regulations made for the purposes of subsection (1), there is an entry for an Australian carbon credit unit in the account, the unit is cancelled.
- (4) The regulations may provide that, if immediately before the Regulator closes a Registry account under regulations made for the purposes of subsection (1), there is an entry for a Kyoto unit in the account, the Regulator must transfer the unit to a voluntary cancellation account.
- (5) The legislative rules may provide that if, immediately before the Regulator closes a Registry account under regulations made for the purposes of subsection (1), there is an entry for a safeguard mechanism credit unit in the account, then the Regulator must take such action in relation to the unit as is specified in the legislative rules.

Refusal of request to open new Registry account

- (6) The regulations may provide that, if:
- (a) the Regulator has closed a person's Registry account under regulations made for the purposes of subsection (1) of this section; and
 - (b) the person requests the Regulator, under regulations made for the purposes of subsection 10(1), to open a Registry account in the name of the person;
- the Regulator must, under regulations made for the purposes of subsection 10(1), refuse the request.

Record

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

Division 4—Entries in Registry accounts

17 Entries in Registry accounts

Australian carbon credit units

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

Kyoto units

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

Safeguard mechanism credit units

- (3) An entry for a safeguard mechanism credit unit in a Registry account may be made in accordance with this Act.

Division 5—Change in name of account holder

18 Change in name of account holder

The regulations may provide that, if:

- (a) a Registry account is kept in the name of a person; and
- (b) the name of the person has changed; and
- (c) the person applies in writing to the Regulator to have the new name substituted for the previous name in the Registry in relation to the account;

the Regulator may make the necessary alterations in the Registry.

Division 6—Correction and rectification of Registry

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

Power of correction

- (1) The Regulator may alter the Registry for the purposes of correcting:
 - (a) a clerical error or an obvious defect in the Registry; or
 - (b) an entry made in the Registry without sufficient cause; or
 - (c) an entry wrongly existing in the Registry; or
 - (d) an entry wrongly removed from the Registry.
- (2) The Regulator may exercise the power conferred by subsection (1):
 - (a) on written application being made to the Regulator by a person; or
 - (b) on the Regulator's own initiative.
- (3) The Regulator must not exercise the power conferred by subsection (1) of this section in a manner contrary to a decision of the Federal Court in proceedings under section 22.
- (3A) The Regulator must not exercise the power conferred by subsection (1) of this section in a manner contrary to:
 - (a) regulations made for the purposes of section 32A of this Act; or
 - (aa) section 48A of this Act; or
 - (b) section 150A of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Publication of alteration

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

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Refusal

- (5) If:
- (a) the Regulator decides to refuse to alter the Registry under subsection (1); and
 - (b) the Regulator made the decision in response to an application;
- the Regulator must give written notice of the decision to the applicant.

20 General power of correction of Registry—Kyoto units

Power of correction

- (1) The Regulator may make such alterations to the Registry as the Regulator considers appropriate for the purposes of ensuring that the relevant provisions of the Kyoto rules are complied with.
- (2) The Regulator may exercise the power conferred by subsection (1):
 - (a) on written application being made to the Regulator by a person; or
 - (b) on the Regulator's own initiative.

Publication of alteration

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

Refusal

- (4) If:
- (a) the Regulator decides to refuse to alter the Registry under subsection (1); and
 - (b) the Regulator made the decision in response to an application;
- the Regulator must give written notice of the decision to the applicant.

22 Rectification of Registry

Application for rectification by aggrieved person

- (1) If a person is aggrieved by any of the following:
- (a) the omission of an entry from the Registry;
 - (b) an entry made in the Registry without sufficient cause;
 - (c) an entry wrongly existing in the Registry;
 - (d) an error or defect in an entry in the Registry;
 - (e) an entry wrongly removed from the Registry;
- the person may apply to the Federal Court for the rectification of the Registry.

Application for rectification by the Regulator

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

Court orders

- (3) If an application is made under subsection (1) or (2) to the Federal Court for the rectification of the Registry, the court may make such order as it thinks fit directing the rectification of the Registry.
- (4) An order made by the court must not be expressed to take effect before the order is made.
- (4A) The court must not make an order that is contrary to:
- (a) regulations made for the purposes of section 32A of this Act;
or
 - (aa) section 48A of this Act; or

(b) section 150A of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

- (5) In proceedings under this section, the court may decide any question that it is necessary or expedient to decide in connection with the rectification of the Registry.

Appearance of Regulator

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

Copy of order to be given to Regulator

- (7) An office copy of an order made by the court may be given to the Regulator.

Compliance with order

- (8) The Regulator must, on receipt of the order, rectify the Registry accordingly.

Division 7—Miscellaneous

23 Making a false entry in the Registry

A person commits an offence if:

- (a) the person:
 - (i) makes an entry in the Registry; or
 - (ii) causes an entry to be made in the Registry; or
 - (iii) concurs in the making of an entry in the Registry; and
- (b) the person does so knowing that the entry is false.

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

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

24 Falsified documents

A person commits an offence if:

- (a) the person produces or tenders in evidence a document; and
- (b) the document falsely purports to be a copy of or extract from an entry in the Registry.

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

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

25 Evidentiary provisions

- (1) The Regulator may supply a copy of or extract from the Registry certified by the Regulator to be a true copy or true extract, as the case may be.

Note: See also section 155 of the *Evidence Act 1995*.

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

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

26 Use and disclosure of information obtained from the Registry

Use

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

Disclosure

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

Exceptions

- (3) Subsections (1) and (2) do not apply if the use or disclosure of the information is relevant to:
- (a) the holding of:
 - (i) Australian carbon credit units; or
 - (ii) Kyoto units; or
 - (iii) safeguard mechanism credit units; recorded in the Registry; or
 - (b) the exercise of the rights attaching to those units.
- (4) A person who wishes to rely on subsection (3) bears an evidential burden in relation to that matter.

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

Ancillary contraventions

- (5) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1) or (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (2); or
 - (d) conspire with others to effect a contravention of subsection (1) or (2).

Civil penalty provisions

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

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

27 Regulations about the Registry

- (1) The regulations may make further provision in relation to the Registry.
- (2) Regulations made for the purposes of subsection (1) may make provision requiring the holder of a Registry account to notify a matter to the Regulator.
- (3) Subsection (2) does not limit subsection (1).
- (3A) Regulations made for the purposes of subsection (1) may:
 - (a) make provision for identifying Registry accounts that are ***restricted Registry accounts*** for the purposes of this section; and
 - (b) restrict or limit the operation of restricted Registry accounts.
- (3B) Regulations made for the purposes of subsection (3A) may:
 - (a) prohibit, restrict or limit the transfer of units from a restricted Registry account; or

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(b) prohibit, restrict or limit the transfer of units to a restricted Registry account.

(3C) Subsection (3B) does not limit subsection (3A).

(3D) Subsections (3A) and (3B) do not limit subsection (1).

(3E) Section 28C does not limit subsections (3A) and (3B) of this section.

Requirement

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

Ancillary contraventions

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

Civil penalty provisions

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

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

28 Suspension of operation of the Registry

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

- (a) the suspension is required so that maintenance can be carried out; or
 - (b) it is prudent to suspend the operation of the Registry in order to:
 - (i) ensure the integrity of the Registry; or
 - (ii) prevent, mitigate or minimise abuse of the Registry; or
 - (iii) prevent, mitigate or minimise criminal activity involving the Registry.
- (2) If the Regulator suspends the operation of the Registry, the Regulator must publish a notice on the Regulator's website informing the public of the suspension.
- (3) If the Regulator suspends the operation of the Registry, the Regulator may defer taking action in relation to the Registry until the suspension ends.

28A Regulator may defer giving effect to a transfer instruction

Scope

- (1) This section applies if the Regulator receives an instruction to transfer one or more:
- (a) Australian carbon credit units; or
 - (b) Kyoto units; or
 - (c) safeguard mechanism credit units;
- to or from a Registry account kept in the name of a person.

Regulator may defer giving effect to the instruction

- (2) The Regulator may defer giving effect to the instruction, for a period that ends not later than the end of the fifth business day after the day on which the instruction was received, if the Regulator is satisfied that it is prudent to do so in order to:
- (a) ensure the integrity of the Registry; or
 - (b) prevent, mitigate or minimise abuse of the Registry; or

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- (c) prevent, mitigate or minimise criminal activity involving the Registry.

Prior notice not required

- (3) The Regulator is not required to give any prior notice of a deferral under subsection (2).

Other provisions

- (4) This section has effect despite:
 - (a) any other provision of this Act; or
 - (b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

28B Regulator may refuse to give effect to a transfer instruction

Scope

- (1) This section applies if the Regulator receives an instruction to transfer one or more:
 - (a) Australian carbon credit units; or
 - (b) Kyoto units; or
 - (c) safeguard mechanism credit units;to or from a Registry account kept in the name of a person.

Regulator may refuse to give effect to instruction

- (2) The Regulator may refuse to give effect to the instruction if the Regulator is satisfied that it is prudent to do so in order to:
 - (a) ensure the integrity of the Registry; or
 - (b) prevent, mitigate or minimise abuse of the Registry; or
 - (c) prevent, mitigate or minimise criminal activity involving the Registry.

Notification

- (3) As soon as practicable after the Regulator refuses, under subsection (2), to give effect to the instruction, the Regulator must give written notice of the refusal to:
 - (a) in any case—the person; or
 - (b) if the instruction was given by another person—that other person.
- (4) A notice given to a person under subsection (3) must invite the person to request the Regulator to cease to refuse to give effect to the instruction.
- (5) A request under subsection (4) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) set out the reason for the request.
- (6) If the person makes a request under subsection (4), the Regulator may, by written notice given to the person, require the person to give the Regulator, within the period specified in the notice, further information in connection with the request.

Prior notice not required

- (7) The Regulator is not required to give any prior notice of a refusal under subsection (2).

Decision on request

- (8) If the Regulator receives a request under subsection (4), the Regulator must:
 - (a) cease to refuse to give effect to the instruction; or
 - (b) decide to continue to refuse to give effect to the instruction.
- (9) The Regulator must take all reasonable steps to ensure that a decision is made under subsection (8):
 - (a) if the Regulator requires the person to give further information under subsection (6) in relation to the request—

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within 7 days after the person gave the Regulator the information; or

(b) otherwise—within 7 days after the request was made.

- (10) As soon as practicable after the Regulator makes a decision under subsection (8), the Regulator must notify the person, in writing, of the decision.

Other provisions

- (11) This section has effect despite:
- (a) any other provision of this Act; or
 - (b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Note: For additional powers of refusal, see:

- (a) paragraph 34(3)(a) of this Act; and
- (b) paragraph 35(3)(a) of this Act; and
- (c) subsection 36(2) of this Act.

28C Conditions restricting or limiting the operation of Registry accounts

Scope

- (1) This section applies to a Registry account kept in the name of a person.

Imposition of conditions

- (2) The Regulator may, by written instrument, impose conditions restricting or limiting the operation of the Registry account for a specified period.
- (3) The Regulator may exercise the power conferred by subsection (2):
- (a) on the Regulator's own initiative; or
 - (b) on written request made to the Regulator by the person.

- (4) The Regulator must not make an instrument under subsection (2) unless the Regulator is satisfied that it is prudent to do so in order to:
- (a) ensure the integrity of the Registry; or
 - (b) prevent, mitigate or minimise abuse of the Registry; or
 - (c) prevent, mitigate or minimise criminal activity involving the Registry.
- (5) A condition under subsection (2) may:
- (a) prohibit, restrict or limit the transfer of units from the Registry account; or
 - (b) prohibit, restrict or limit the transfer of units to the Registry account.
- (6) Subsection (5) does not limit subsection (2).

Notification

- (7) As soon as practicable after making an instrument under subsection (2), the Regulator must give the person a copy of the instrument.
- (8) If an instrument under subsection (2) is made on the Regulator's own initiative, the copy of the instrument must be accompanied by a notice inviting the person to request the Regulator to:
- (a) revoke the instrument; or
 - (b) vary the instrument in the manner specified in the request.

Request

- (9) A request under paragraph (3)(b) or subsection (8) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) set out the reason for the request.

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Further information

- (10) If the person makes a request under subsection (8), the Regulator may, by written notice given to the person, require the person to give the Regulator, within the period specified in the notice, further information in connection with the request.

Prior notice not required

- (11) The Regulator is not required to give any prior notice of a decision to make an instrument under subsection (2).

Decision in relation to instrument made on own initiative

- (12) If the Regulator receives a request under subsection (8), the Regulator must:
- (a) if the request is to revoke the instrument:
 - (i) revoke the instrument; or
 - (ii) decide not to revoke the instrument; or
 - (b) if the request is to vary the instrument:
 - (i) vary the instrument as requested; or
 - (ii) decide not to vary the instrument.
- (13) The Regulator must take all reasonable steps to ensure that a decision is made under subsection (12):
- (a) if the Regulator requires the person to give further information under subsection (10) in relation to the request—within 7 days after the person gave the Regulator the information; or
 - (b) otherwise—within 7 days after the request was made.
- (14) As soon as practicable after the Regulator makes a decision under subsection (12), the Regulator must notify the person, in writing, of the decision.

Revocation of instrument made in response to a request

- (15) If:
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- (a) an instrument is in force under subsection (2); and
 - (b) the instrument was made in response to a request under paragraph (3)(b);
- the Regulator must, at the written request of the person, revoke the instrument.

Acts Interpretation Act

- (16) Subsections (12) and (15) do not, by implication, limit subsection 33(3) of the *Acts Interpretation Act 1901*.

Other provisions

- (17) This section has effect despite:
- (a) any other provision of this Act; or
 - (b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

28D Suspension of Registry accounts

Scope

- (1) This section applies to a Registry account kept in the name of a person.

Suspension

- (2) The Regulator may, by written instrument, suspend the Registry account for a specified period.
- (3) The Regulator may exercise the power conferred by subsection (2):
- (a) on the Regulator's own initiative; or
 - (b) on written request made to the Regulator by the person.
- (4) The Regulator must not make an instrument under subsection (2) unless the Regulator is satisfied that it is prudent to do so in order to:
- (a) ensure the integrity of the Registry; or
 - (b) prevent, mitigate or minimise abuse of the Registry; or

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- (c) prevent, mitigate or minimise criminal activity involving the Registry.
- (5) If an account is suspended under subsection (2):
- (a) the Regulator must not:
 - (i) give effect to any instruction to transfer units to or from the Registry account; or
 - (ii) issue any Australian carbon credit units or safeguard mechanism credit units to the Registry account; and
 - (b) a notice to relinquish Australian carbon credit units under section 175 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* does not have effect; and
 - (c) a notice to relinquish Australian carbon credit units or safeguard mechanism credit units under section 22XNE of the *National Greenhouse and Energy Reporting Act 2007* does not have effect.

Notification

- (6) As soon as practicable after making an instrument under subsection (2), the Regulator must give the person a copy of the instrument.
- (7) If an instrument under subsection (2) is made on the Regulator's own initiative, the copy of the instrument must be accompanied by a notice inviting the person to request the Regulator to:
- (a) revoke the instrument; or
 - (b) vary the instrument in the manner specified in the request.

Request

- (8) A request under paragraph (3)(b) or subsection (7) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Regulator; and
 - (c) set out the reason for the request.

Further information

- (9) If the person makes a request under subsection (7), the Regulator may, by written notice given to the person, require the person to give the Regulator, within the period specified in the notice, further information in connection with the request.

Prior notice not required

- (10) The Regulator is not required to give any prior notice in relation to the decision to make an instrument under subsection (2).

Decision in relation to instrument made on own initiative

- (11) If the Regulator receives a request under subsection (7), the Regulator must:
- (a) if the request is to revoke the instrument:
 - (i) revoke the instrument; or
 - (ii) decide not to revoke the instrument; or
 - (b) if the request is to vary the instrument:
 - (i) vary the instrument as requested; or
 - (ii) decide not to vary the instrument.
- (12) The Regulator must take all reasonable steps to ensure that a decision is made under subsection (11):
- (a) if the Regulator requires the person to give further information under subsection (9) in relation to the request—within 7 days after the person gave the Regulator the information; or
 - (b) otherwise—within 7 days after the request was made.
- (13) As soon as practicable after the Regulator makes a decision under subsection (11), the Regulator must notify the person, in writing, of the decision.

Revocation of instrument made in response to a request

- (14) If:
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- (a) an instrument is in force under subsection (2); and
- (b) the instrument was made in response to a request under paragraph (3)(b);

the Regulator must, at the written request of the person, revoke the instrument.

Acts Interpretation Act

- (15) Subsections (11) and (14) do not, by implication, limit subsection 33(3) of the *Acts Interpretation Act 1901*.

Other provisions

- (16) This section has effect despite:
 - (a) any other provision of this Act; or
 - (b) anything in the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (c) anything in the *National Greenhouse and Energy Reporting Act 2007*.

Part 3—Kyoto units

29 Simplified outline

The following is a simplified outline of this Part:

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

30 Entries for Kyoto units

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

31 Issue of Australia's assigned amount units

Object

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

Issue

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

32 Issue of removal units

Object

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

Issue

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

32A Ownership of Kyoto unit

- (1) The regulations may provide that the registered holder of a Kyoto unit:
 - (a) is the legal owner of the unit; and
 - (b) may, subject to this Act, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.
- (2) Regulations made for the purposes of subsection (1) only protect a person who deals with the registered holder of the unit as a purchaser:
 - (a) in good faith for value; and
 - (b) without notice of any defect in the title of the registered holder.

33 Transfer of Kyoto units

- (1) For the purposes of this Act, if there is an entry for a Kyoto unit in a Registry account (the **first Registry account**) kept by a person (the **first person**):
- (a) a **transfer** of the unit from the first Registry account to a Registry account kept by another person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and
 - (ii) the making of an entry for the unit in the Registry account kept by the other person; and
 - (b) the **transfer** of the unit from the first Registry account to another Registry account kept by the first person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and
 - (ii) the making of an entry for the unit in the other Registry account kept by the first person; and
 - (c) the **transfer** of the unit from the first Registry account to a foreign account kept by another person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and
 - (ii) the making of an entry for the unit in the foreign account kept by the other person; and
 - (d) the **transfer** of the unit from the first Registry account to a foreign account kept by the first person consists of:
 - (i) the removal of the entry for the unit from the first Registry account; and
 - (ii) the making of an entry for the unit in the foreign account kept by the first person.
- (2) For the purposes of this Act, if there is an entry for a Kyoto unit in a foreign account, a **transfer** of the unit from the foreign account to a Registry account consists of:
- (a) the removal of the entry for the unit from the foreign account; and
 - (b) the making of an entry for the unit in the Registry account.

34 Domestic transfers of Kyoto units

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

Compliance with instruction

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

35 Outgoing international transfers of Kyoto units

- (1) If:
- (a) there is in force a declaration under section 37 that Australia is in compliance with the emissions trading eligibility requirements under the Kyoto rules; and
 - (b) a person (the *first person*) is the registered holder of one or more Kyoto units;
- the person may, by electronic notice transmitted to the Regulator, instruct the Regulator to transfer the units from the relevant Registry account kept by the person (the *first Registry account*) to:
- (c) a foreign account kept by another person; or
 - (d) a foreign account kept by the first person.
- (2) An instruction under subsection (1) must set out:
- (a) the account number of the relevant Registry account kept by the first person; and
 - (b) such other information as is specified in the regulations.

Compliance with instruction

- (3) If the Regulator receives an instruction under subsection (1):
- (a) if the Regulator is satisfied that giving effect to the instruction would breach:
 - (i) regulations made for the purposes of section 39 (Kyoto rules); or
 - (ii) regulations made for the purposes of section 41 (commitment period reserve);the Regulator must, by written notice given to the first person, refuse to give effect to the instruction; and
 - (b) if paragraph (a) does not apply—the Regulator must take such steps as are required by regulations made for the purposes of section 39.
- (4) Regulations made for the purposes of section 39 may require the Regulator to remove the entry for the unit or units from the relevant Registry account.

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- (5) Subsection (4) does not limit section 39.
- (6) If the Regulator takes steps under paragraph (3)(b) in relation to an instruction, the Registry must set out a record of the instruction.
- (7) If the first person is the Commonwealth, the Minister may give an instruction under subsection (1) on behalf of the first person.

36 Incoming international transfers of Kyoto units

- (1) If:
 - (a) there is in force a declaration under section 37 that Australia is in compliance with the emissions trading eligibility requirements under the Kyoto rules; and
 - (b) the Regulator receives an instruction, in accordance with the relevant provisions of the Kyoto rules, for the transfer of a Kyoto unit from a foreign account; and
 - (c) the Kyoto unit is not specified in the regulations as a unit that cannot be transferred to a Registry account; and
 - (d) making an entry for the Kyoto unit in the relevant Registry account would not breach regulations made for the purposes of section 39 (Kyoto rules); and
 - (e) making an entry for the Kyoto unit in the relevant Registry account would not breach regulations made for the purposes of section 44 (Commonwealth Registry accounts);the Regulator must make an entry for the Kyoto unit in the relevant Registry account.

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

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

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

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

Revocation of declaration

- (2) If:
 - (a) a declaration is in force under subsection (1); and
 - (b) the Minister is not satisfied that Australia is in compliance with the eligibility requirements mentioned in paragraph 2 of the Annex to Decision 11/CMP.1 of the Meeting of the Kyoto Parties;the Minister must, by writing, revoke the declaration.

Declaration or revocation is not a legislative instrument

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

39 Kyoto rules

- (1) The regulations may make provision for, or in relation to, giving effect to the Kyoto rules, so far as the Kyoto rules relate to:
 - (a) the transfer of a Kyoto unit from a Registry account to a foreign account; or
 - (b) the transfer of a Kyoto unit from a foreign account to a Registry account; or
 - (c) the transfer of a Kyoto unit from a Registry account to a Commonwealth Registry account; or
 - (d) the issue of a Kyoto unit; or

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- (e) the conversion of an assigned amount unit, or a removal unit, to an emission reduction unit.
- (2) Regulations made for the purposes of subsection (1) may:
 - (a) prevent, restrict or limit the transfer of Kyoto units from a Registry account to:
 - (i) a foreign account; or
 - (ii) a voluntary cancellation account; or
 - (b) prevent, restrict or limit the transfer of Kyoto units from a foreign account to a Registry account.
- (3) Subsection (2) does not limit subsection (1).

40 Carry-over restrictions

Kyoto units for which carry-over is permitted

- (1) The regulations may make provision for, or in relation to, the following matters:
 - (a) the identification of:
 - (i) assigned amount units in Registry accounts; or
 - (ii) certified emission reductions (other than temporary certified emission reductions or long-term certified emission reductions) in Registry accounts; or
 - (iii) emission reduction units (other than emission reduction units that have been converted from removal units) in Registry accounts;as Kyoto units for which carry-over is permitted subject to such limits or restrictions (if any) as are specified in the regulations;
 - (b) the procedures for the carry-over of such Kyoto units;
 - (c) requiring the Regulator to transfer from the relevant Registry account to a mandatory cancellation account any such Kyoto units that have not been carried over in accordance with those procedures.

Kyoto units for which carry-over is not permitted

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

Kyoto rules

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

41 Commitment period reserve

- (1) The regulations may make provision for, or in relation to, the management of Australia's commitment period reserve.
- (2) Regulations made for the purposes of subsection (1) may prevent, restrict or limit the transfer of Kyoto units from a Registry account to:
 - (a) a foreign account; or
 - (b) a voluntary cancellation account.
- (3) Regulations made for the purposes of subsection (1) may prevent, restrict or limit the giving of instructions, under

paragraph 154(1)(b) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, for the transfer of Kyoto Australian carbon credit units.

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

Scope

- (1) This section applies if:
 - (a) a person is the holder of a Registry account in which there is an entry for a temporary certified emission reduction or a long-term certified emission reduction; and
 - (b) the temporary certified emission reduction or long-term certified emission reduction expires.

Transfer to mandatory cancellation account

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

43 Replacement of long-term certified emission reductions

Scope

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

Transfer to mandatory cancellation account

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

Replacement of long-term certified emission reduction

- (3) For the purposes of this section, if a long-term certified emission reduction relates to a clean development mechanism project, the **replacement** by the person of the long-term certified emission reduction consists of instructing the Regulator under section 34 to transfer:
- (a) an assigned amount unit; or
 - (b) a removal unit; or
 - (c) an emission reduction unit; or
 - (d) a certified emission reduction (other than a temporary certified emission reduction or a long-term certified emission reduction); or
 - (e) a long-term certified emission reduction relating to the project;
- from a Registry account kept by the person to whichever of the following accounts is taken, under the regulations, to be the appropriate account:
- (f) the long-term certified emission reduction replacement (storage reversal) account;
 - (g) the long-term certified emission reduction replacement (non-certification) account.

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

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

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

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

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

45 A registered Kyoto unit is personal property for certain purposes

Scope

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

Personal property

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

45A Registration of equitable interests in relation to Kyoto units

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

46 Equitable interests in relation to a Kyoto unit

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

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

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

Effect of transmission

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

Declaration of transmission

- (2) The transferee must, within 90 days after the transmission, give the Regulator:
 - (a) a declaration of transmission; and
 - (b) such evidence of transmission as is specified in the regulations.
- (3) A declaration of transmission must be made in accordance with the regulations.
- (4) If the transferee does not already have a Registry account, the declaration of transmission must be accompanied by a request

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under regulations made for the purposes of subsection 10(1) for the Regulator to open a Registry account in the name of the transferee.

- (5) If the Regulator is satisfied that special circumstances warrant the extension of the 90-day period mentioned in subsection (2), the Regulator may extend that period.
- (6) The Regulator may exercise the power conferred by subsection (5):
 - (a) on written application being made to the Regulator by the transferee; or
 - (b) on the Regulator's own initiative.

Transfer of unit—transferee already has a Registry account

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

Transfer of unit—transferee does not have a Registry account

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

Record

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

When the transferee is the Commonwealth

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

Notification

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

Part 4—Safeguard mechanism credit units

48 Simplified outline of this Part

- This Part sets out rules about the ownership, transfer and transmission of safeguard mechanism credit units.

48A A safeguard mechanism credit unit is personal property

A safeguard mechanism credit unit is personal property and, subject to sections 48D and 48E, is transmissible by assignment, by will and by devolution by operation of law.

48B Ownership of safeguard mechanism credit units

- (1) The registered holder of a safeguard mechanism credit unit:
 - (a) is the legal owner of the unit; and
 - (b) may, subject to this Act and the *National Greenhouse and Energy Reporting Act 2007*, deal with the unit as its legal owner and give good discharges for any consideration for any such dealing.
- (2) Subsection (1) only protects a person who deals with the registered holder of the unit as a purchaser:
 - (a) in good faith for value; and
 - (b) without notice of any defect in the title of the registered holder.

48C Transfer of safeguard mechanism credit units

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

- (a) a ***transfer*** of the unit from the first Registry account to a Registry account kept by another person consists of:

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

48D Transmission of safeguard mechanism credit units by assignment

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

48E Transmission of safeguard mechanism credit units by operation of law etc.

Scope

- (1) This section applies if a safeguard mechanism credit unit for which there is an entry in a Registry account is transmitted from a person (the *transferor*) to another person (the *transferee*) by any lawful means other than by a transfer under section 48D.

Effect of transmission

- (2) The transmission is of no force until the Regulator transfers the safeguard mechanism credit unit under subsection (8) or (9).

Declaration of transmission

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

(b) on the Regulator's own initiative.

Transfer of unit—transferee already has a Registry account

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

Transfer of unit—transferee does not have a Registry account

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

Record

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

When the transferee is the Commonwealth

- (11) If the transferee is the Commonwealth, the Minister may give:
- (a) the declaration of transmission; and
 - (b) the evidence mentioned in paragraph (3)(b);
- on behalf of the transferee.

Notification

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

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- (i) extend the 90-day period mentioned in subsection (3);
or
 - (ii) refuse to extend the 90-day period mentioned in subsection (3); and
 - (b) the Regulator made the decision in response to an application;
- the Regulator must give written notice of the decision to the applicant.

48F Transfer of safeguard mechanism credit units to another Registry account held by the transferor

Scope

- (1) This section applies if:
 - (a) a person keeps a Registry account (the ***first Registry account***) in which there is an entry for a safeguard mechanism credit unit; and
 - (b) the person, by electronic notice transmitted to the Regulator, instructs the Regulator to transfer the unit from the first Registry account to another Registry account kept by the person; and
 - (c) the instruction sets out:
 - (i) the account number of the first Registry account; and
 - (ii) the account number of the other Registry account.

Compliance with instruction

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

48G Registration of equitable interests in relation to a safeguard mechanism credit unit

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

48H Equitable interests in relation to a safeguard mechanism credit unit

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

48J Legislative rules about safeguard mechanism credit units

The legislative rules may make further provision in relation to safeguard mechanism credit units.

Part 5—Publication of information

58 Simplified outline

The following is a simplified outline of this Part:

- The Regulator must publish certain information about:
 - (a) the holders of Registry accounts; and
 - (b) Kyoto units; and
 - (c) Australian carbon credit units; and
 - (d) safeguard mechanism credit units.

59 Information about holders of Registry accounts

The Regulator must:

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

60 Kyoto information

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

60A Information about Australian carbon credit units

The legislative rules may require the Regulator to:

- (a) publish on the Regulator's website specified information about:
 - (i) Australian carbon credit units for which there are entries in Registry accounts; and
 - (ii) the registered holders of such units; and
- (b) do so in accordance with specified requirements.

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

60B Information about safeguard mechanism credit units

The legislative rules may require the Regulator to:

- (a) publish on the Regulator's website specified information about:
 - (i) safeguard mechanism credit units for which there are entries in Registry accounts; and
 - (ii) the registered holders of such units; and
- (b) do so in accordance with specified requirements.

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

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

Kyoto units

- (1) The Regulator must:
 - (a) within 30 days after the commencement of this section, publish on the Regulator's website a statement setting out a concise description of the characteristics of each of the following types of eligible international emissions units:
 - (i) certified emission reductions (other than a temporary certified emission reduction or a long-term certified emission reduction);

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

61B Information about number of voluntarily cancelled Australian carbon credit units

As soon as practicable after one or more Australian carbon credit units held by a person are cancelled under section 64B, the Regulator must publish on the Regulator's website:

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

62 Information about number of voluntarily cancelled Kyoto units

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

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

63 Information about number of voluntarily cancelled safeguard mechanism credit units

As soon as practicable after one or more safeguard mechanism credit units held by a person are cancelled under section 66, the Regulator must publish on the Regulator's website:

- (a) the name of the person; and

- (b) the total number of safeguard mechanism credit units cancelled; and
- (c) such other information (if any) as is specified in the legislative rules.

Part 6—Voluntary cancellation of emissions units

64 Simplified outline

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more Australian carbon credit units, the person may request the Regulator to cancel any or all of those units.
- If a person is the registered holder of one or more Kyoto units, the person may request the Regulator to transfer to a voluntary cancellation account any or all of those units.

64B Voluntary cancellation of Australian carbon credit units

- (1) If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Regulator, request the Regulator to cancel any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the Australian carbon credit unit or units that are to be cancelled; and
 - (b) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the Australian carbon credit unit or units that are to be cancelled.
- (3) If the Regulator receives a notice under subsection (1) in relation to an Australian carbon credit unit:
 - (a) the unit is cancelled; and
 - (b) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit; and

- (c) if the unit is a Kyoto Australian carbon credit unit:
 - (i) the Minister must, by written notice given to the Regulator, direct the Regulator to transfer a Kyoto unit from a Commonwealth holding account to a voluntary cancellation account before the end of the true-up period for the relevant commitment period; and
 - (ii) the Regulator must comply with a direction under subparagraph (i).
- (4) The Registry must set out a record of each notice under subsection (1).

65 Voluntary cancellation of Kyoto units

- (1) If a person is the registered holder of one or more Kyoto units, the person may, by electronic notice transmitted to the Regulator, request the Regulator to transfer to a voluntary cancellation account any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the Kyoto unit or units that are to be transferred to the voluntary cancellation account; and
 - (b) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the Kyoto unit or units that are to be transferred to the voluntary cancellation account; and
 - (c) set out such other information (if any) as is specified in the legislative rules.
- (3) If:
 - (a) a person requests that a Kyoto unit be transferred to a voluntary cancellation account; and
 - (b) the Regulator is satisfied that the transfer of the unit from the person's Registry account to the voluntary cancellation account would not breach regulations made for the purposes of section 39 (Kyoto rules); and

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

66 Voluntary cancellation of safeguard mechanism credit units

- (1) If:
 - (a) a person is the registered holder of one or more safeguard mechanism credit units; and
 - (b) a determination is in force under subsection (5);the person may, by electronic notice transmitted to the Regulator, request the Regulator to cancel any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the safeguard mechanism credit unit or units that are to be cancelled; and
 - (b) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the safeguard mechanism credit unit or units that are to be cancelled; and
 - (c) set out such other information (if any) as is specified in the legislative rules.
- (3) If the Regulator receives a notice under subsection (1) in relation to a safeguard mechanism credit unit:
 - (a) if the legislative rules require the Regulator to cancel the unit—the Regulator must cancel the unit; and
 - (b) if the legislative rules require the Regulator to take specified action in relation to the unit—the Regulator must take that action; and

- (c) the Regulator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (4) The Registry must set out a record of each notice under subsection (1).
- (5) The Minister may, by legislative instrument, determine that any person who is the registered holder of one or more safeguard mechanism credit units may request the Regulator to cancel any or all of those units.

Part 7—Civil penalty orders

67 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

68 References to Court

In this Part:

Court means:

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

69 Civil penalty orders

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

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the Court may have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and

- (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
 - (e) the extent to which the person has co-operated with the authorities; and
 - (f) if the person is a body corporate:
 - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
 - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
 - (iii) whether the body corporate had a corporate culture conducive to compliance.
- (4) The pecuniary penalty payable under subsection (1) by a body corporate must not exceed:
- (a) in the case of a contravention of subsection 26(1), (2) or (5)—500 penalty units for each contravention; or
 - (b) otherwise—10,000 penalty units for each contravention.
- (5) The pecuniary penalty payable under subsection (1) by a person other than a body corporate must not exceed:
- (a) in the case of a contravention of subsection 26(1), (2) or (5)—100 penalty units for each contravention; or
 - (b) otherwise—2,000 penalty units for each contravention.

Civil enforcement of penalty

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

70 Who may apply for a civil penalty order

- (1) Only the Regulator may apply for a civil penalty order.

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- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

71 Two or more proceedings may be heard together

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

72 Time limit for application for an order

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

73 Civil evidence and procedure rules for civil penalty orders

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

74 Civil proceedings after criminal proceedings

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

75 Criminal proceedings during civil proceedings

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

76 Criminal proceedings after civil proceedings

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

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

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

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

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

78 Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
 - (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

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- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

79 State of mind

Scope

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of any of the following civil penalty provisions:
- (a) subsection 26(1);
 - (b) subsection 26(2);
 - (c) subsection 27(4).

State of mind

- (2) In the proceedings, it is not necessary to prove:
- (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (3) Subsection (2) does not affect the operation of section 78.

80 Continuing contraventions

- (1) If an act or thing is required, under a civil penalty provision of this Act, to be done within a particular period, or before a particular
-

time, then the obligation to do that act or thing continues (even if the period has expired or the time has passed) until the act or thing is done.

- (2) A person who contravenes subsection 27(4), so far as that subsection relates to a requirement mentioned in subsection 27(2), commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.
- (3) The pecuniary penalty payable under subsection 69(1) for such a separate contravention in respect of a particular day must not exceed 5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted.

Part 8—Review of decisions

81 Simplified outline

The following is a simplified outline of this Part:

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

82 Reviewable decisions

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

Reviewable decisions	
Item	Decision
1	A decision to refuse to extend a period under subsection 47(5) or 48E(6).
2	A decision to refuse to make an entry in a Registry account under section 36.
4	A decision under regulations made for the purposes of subsection 10(1) to refuse to open a Registry account.
5	A decision under regulations made for the purposes of subsection 16(1) to close a Registry account.
6	A decision under section 19 to alter the Registry.
7	A decision to refuse to alter the Registry under section 19.
8	A decision under section 20 to make an alteration to the Registry.
9	A decision to refuse to make an alteration to the Registry under section 20.
10	A decision under subsection 28B(8) to continue to refuse to give effect to a transfer instruction.

Reviewable decisions

Item	Decision
11	A decision under subsection 28C(12) not to revoke an instrument imposing conditions restricting or limiting the operation of a Registry account.
12	A decision under subsection 28C(12) not to vary an instrument imposing conditions restricting or limiting the operation of a Registry account.
13	A decision under subsection 28D(11) not to revoke an instrument suspending a Registry account.
14	A decision under subsection 28D(11) not to vary an instrument suspending a Registry account.

83 Applications for reconsideration of decisions made by delegates of the Regulator*Scope*

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

Application

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Regulator for the Regulator to reconsider the decision.
- (3) The application must:
- be in a form approved in writing by the Regulator; and
 - set out the reasons for the application; and
 - be accompanied by the fee (if any) specified in the regulations.
- (4) The application must be made within:
- 28 days after the applicant is informed of the decision; or
 - if, either before or after the end of that period of 28 days, the Regulator extends the period within which the application may be made—the extended period.

Section 84

- (5) An approved form of an application may provide for verification by statutory declaration of statements in applications.
- (6) A fee specified under paragraph (3)(c) must not be such as to amount to taxation.

84 Reconsideration by the Regulator

- (1) Upon receiving such an application, the Regulator must:
 - (a) reconsider the decision; and
 - (b) affirm, vary or revoke the decision.
- (2) The Regulator's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.
- (3) The Regulator must give to the applicant a written notice stating the Regulator's decision on the reconsideration.
- (4) Within 28 days after making the decision on the reconsideration, the Regulator must give the applicant a written statement of the Regulator's reasons for the decision.

85 Deadline for reconsideration

- (1) The Regulator must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The Regulator is taken, for the purposes of this Part, to have made a decision affirming the original decision if the Regulator has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

86 Review by the Administrative Review Tribunal

- (1) Applications may be made to the Administrative Review Tribunal to review a reviewable decision if the Regulator has affirmed or varied the decision under section 84.

- (2) Applications may be made to the Administrative Review Tribunal to review a reviewable decision if the decision was not made by a delegate of the Regulator.

Part 9—Miscellaneous

87 Computerised decision-making

- (1) The Regulator may, by legislative instrument, arrange for the use, under the Regulator's control, of computer programs for any purposes for which the Regulator may, or must, under this Act or the regulations:
 - (a) make a decision; or
 - (b) exercise any power or comply with any obligation; or
 - (c) do anything else related to making a decision or exercising a power or complying with an obligation.
- (2) For the purposes of this Act and the regulations, the Regulator is taken to have:
 - (a) made a decision; or
 - (b) exercised a power or complied with an obligation; or
 - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under such an arrangement.

88 Regulator's power to require further information

If:

- (a) a person makes a request to the Regulator under the regulations; and
 - (b) the Regulator exercises a power, under another provision of the regulations, to require the person to give the Regulator further information in connection with the request;
- the Regulator:
- (c) must ensure that the further information is relevant to the matter to which the request relates; and
 - (d) must ensure that the power is exercised in a reasonable way.

89 Delegation by the Minister

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

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

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

90 Delegation by the Secretary

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

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

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

91 Liability for damages

None of the following:

- (a) the Minister;
- (b) a delegate of the Minister;
- (c) the Secretary;
- (d) a delegate of the Secretary;
- (e) the Regulator;
- (f) a delegate of the Regulator;

Section 92

is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

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

92 Executive power of the Commonwealth

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

93 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 *Public Governance, Performance and Accountability Act 2013* 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.

94 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.

94A Legislative rules

- (1) The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the legislative rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Legislative rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but legislative rules are taken to be consistent with the regulations to the extent that legislative rules are capable of operating concurrently with the regulations.
- (4) Legislative rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.

Section 95

- (5) Subsection (4) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.
- (6) If legislative rules make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.
- (7) Subsection (6) does not apply if the publication would infringe copyright.

95 Regulations may prescribe matters by reference to other instruments

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

96 Administrative decisions under the regulations

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

97 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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian National Registry of Emissions Units Act 2011	99, 2011	15 Sept 2011	s 3–97: 8 Dec 2011 (s 2(1) item 2) Remainder: 15 Sept 2011 (s 2(1) item 1)	
Clean Energy (Consequential Amendments) Act 2011	132, 2011	18 Nov 2011	Sch 1 (items 5–7, 13, 15, 43–46, 215A): 2 Apr 2012 (s 2(1) item 2) Sch 1 (items 229–256): 1 July 2012 (s 2(1) item 3) Sch 4: 8 Dec 2011 (s 2(1) item 8)	Sch 1 (item 215A)
Clean Energy Legislation Amendment Act 2012	84, 2012	28 June 2012	Sch 4: 29 June 2012 (s 2(1) item 4)	—
Clean Energy Amendment (International Emissions Trading and Other Measures) Act 2012	204, 2012	13 Dec 2012	Sch 1 (items 1–27): 14 Dec 2012 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 8 (item 7): 24 June 2014 (s 2(1) item 9)	—
Clean Energy Legislation (Carbon Tax Repeal) Act 2014	83, 2014	17 July 2014	Sch 1 (items 13–91, 332): 1 July 2014 (s 2(1) items 2, 3)	Sch 1 (item 332)
Carbon Farming Initiative Amendment Act 2014	119, 2014	25 Nov 2014	Sch 1 (items 17–21): 13 Dec 2014 (s 2(1) item 2 and F2014L01691)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 5 (items 4, 74–77) and Sch 7: 14 Apr 2015 (s 2)	Sch 5 (items 74–77) and Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 51–53): 5 Mar 2015 (s 2(1) item 2)	—
Safeguard Mechanism (Crediting) Amendment Act 2023	14, 2023	11 Apr 2023	Sch 2 (items 1–33): 12 Apr 2023 (s 2(1) item 2)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024	38, 2024	31 May 2024	Sch 7 (item 6): 14 Oct 2024 (s 2(1) item 2)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3.....	am No 132, 2011; No 83, 2014; No 14, 2023
s 4.....	am No 132, 2011; Nos 84 and 204, 2012; No 31, 2014; No 83, 2014; No 126, 2015; No 14, 2023
s 5.....	am No 132, 2011
Part 2	
Division 1	
s 8.....	am No 132, 2011
Division 2	
s 9.....	am No 132, 2011; No 83, 2014; No 14, 2023
Division 3	
s 10.....	am No 132, 2011
s 11.....	am No 132, 2011; No 83, 2014; No 14, 2023
s 12.....	am No 132, 2011
s 13.....	am No 132, 2011
s 14A.....	ad No 132, 2011 rep No 83, 2014
s 15.....	am No 132, 2011; No 83, 2014; No 14, 2023
s 16.....	am No 132, 2011; No 83, 2014; No 14, 2023
Division 4	
s 17.....	am No 132, 2011; No 83, 2014; No 14, 2023
Division 5	
s 18.....	am No 132, 2011
Division 6	
s 19.....	am No 132, 2011; No 83, 2014; No 14, 2023
s 20.....	am No 132, 2011
s 21.....	am No 132, 2011; No 204, 2012 rep No 83, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 22.....	am No 132, 2011; No 83, 2014; No 14, 2023
Division 7	
s 25.....	am No 132, 2011
s 26.....	am No 132, 2011; No 83, 2014; No 14, 2023
s 27.....	am No 132, 2011; No 84, 2012; No 83, 2014
s 28.....	am No 132, 2011
s 28A.....	ad No 132, 2011
	am No 132, 2011; No 84, 2012; No 83, 2014; No 14, 2023
s 28B.....	ad No 132, 2011
	am No 132, 2011; No 83, 2014; No 14, 2023
s 28C.....	ad No 132, 2011
	am No 132, 2011; No 83, 2014
s 28D.....	ad No 132, 2011
	am No 132, 2011; No 83, 2014; No 14, 2023
Part 3	
s 31, 32.....	am No 132, 2011
s 32A.....	ad No 132, 2011
s 34.....	am No 132, 2011
s 35.....	am No 132, 2011
s 36.....	am No 132, 2011; No 126, 2015
s 38.....	am No 132, 2011
	rep No 119, 2014
s 39.....	am No 119, 2014
s 40.....	am No 132, 2011
s 41.....	am No 119, 2014
s 42, 43.....	am No 132, 2011
s 45A.....	ad No 132, 2011
s 47.....	am No 132, 2011
Part 4	
Part 4 heading.....	rs No 132, 2011
	rep No 83, 2014

Endnote 4—Amendment history

Provision affected	How affected
	ad No 14, 2023
Part 4	rep No 83, 2014
	ad No 14, 2023
Division 1 heading.....	ad No 204, 2012
	rep No 83, 2014
s 48.....	am No 132, 2011; No 204, 2012
	rep No 83, 2014
	ad No 14, 2023
Division 2	ad No 204, 2012
	rep No 83, 2014
s 48A.....	ad No 204, 2012
	rep No 83, 2014
	ad No 14, 2023
s 48B	ad No 204, 2012
	rep No 83, 2014
	ad No 14, 2023
s 48C	ad No 204, 2012
	rep No 83, 2014
	ad No 14, 2023
s 48D.....	ad No 204, 2012
	rep No 83, 2014
	ad No 14, 2023
s 48E	ad No 204, 2012
	rep No 83, 2014
	ad No 14, 2023
s 48F	ad No 14, 2023
s 48G.....	ad No 14, 2023
s 48H.....	ad No 14, 2023
s 48J	ad No 14, 2023
Division 3 heading.....	ad No 204, 2012
	rep No 83, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 49.....	am No 132, 2011 rep No 83, 2014
s 49A.....	ad No 132, 2011 rep No 83, 2014
s 50.....	am No 132, 2011 rep No 83, 2014
s 51.....	am No 132, 2011 rep No 83, 2014
s 52.....	am No 132, 2011 rep No 83, 2014
s 53.....	am No 132, 2011 rep No 83, 2014
s 54.....	am No 132, 2011 rep No 83, 2014
s 54A.....	ad No 132, 2011 rep No 83, 2014
s 55.....	am No 132, 2011 rep No 83, 2014
s 56.....	am No 132, 2011 rep No 83, 2014
s 57.....	am No 132, 2011; No 204, 2012 rep No 83, 2014
Part 5	
s 58.....	am No 132, 2011 rs No 132, 2011 am No 83, 2014; No 14, 2023
s 59.....	am No 132, 2011
s 59A.....	ad No 204, 2012 rep No 83, 2014
s 60.....	am No 132, 2011
s 60A.....	ad No 14, 2023

Endnote 4—Amendment history

Provision affected	How affected
s 60B	ad No 14, 2023
s 61	am No 132, 2011; No 204, 2012; No 83, 2014
s 61A	ad No 132, 2011 rep No 83, 2014
s 61B	ad No 132, 2011
s 62	am No 132, 2011
s 63	am No 132, 2011 rep No 83, 2014 ad No 14, 2023
s 63A	ad No 132, 2011 rep No 83, 2014
s 63B	ad No 204, 2012 rep No 83, 2014
s 63C	ad No 204, 2012 rep No 83, 2014
s 63D	ad No 204, 2012 rep No 83, 2014
s 63E	ad No 204, 2012 rep No 83, 2014
s 63F	ad No 204, 2012 rep No 83, 2014
s 63G	ad No 204, 2012 rep No 83, 2014
Part 6	
s 64	am No 132, 2011 rs No 132, 2011 am No 83, 2014
s 64A	ad No 132, 2011 rep No 83, 2014
s 64B	ad No 132, 2011
s 65	am No 132, 2011; No 14, 2023

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 66.....	am No 132, 2011 rep No 83, 2014 ad No 14, 2023
Part 6A.....	ad No 204, 2012 rep No 83, 2014
s 66A.....	ad No 204, 2012 rep No 83, 2014
Part 6B.....	ad No 204, 2012 rep No 83, 2014
s 66B.....	ad No 204, 2012 rep No 83, 2014
s 66C.....	ad No 204, 2012 rep No 83, 2014
s 66D.....	ad No 204, 2012 rep No 83, 2014
s 66E.....	ad No 204, 2012 rep No 83, 2014
s 66F.....	ad No 204, 2012 rep No 83, 2014
s 66G.....	ad No 204, 2012 rep No 83, 2014
s 66H.....	ad No 204, 2012 rep No 83, 2014
s 66J.....	ad No 204, 2012 rep No 83, 2014
s 66K.....	ad No 204, 2012 rep No 83, 2014
s 66L.....	ad No 204, 2012 rep No 83, 2014
s 66M.....	ad No 204, 2012 rep No 83, 2014

Endnote 4—Amendment history

Provision affected	How affected
s 66N.....	ad No 204, 2012 rep No 83, 2014
Part 7	
s 70.....	am No 132, 2011
s 79.....	am No 204, 2012; No 83, 2014
Part 8	
s 81.....	am No 132, 2011; No 38, 2024
s 82.....	am No 132, 2011; No 204, 2012; No 83, 2014; No 14, 2023
s 83.....	am No 132, 2011
s 84.....	am No 132, 2011
s 85.....	am No 132, 2011
s 86.....	am No 132, 2011; No 38, 2024
Part 9	
s 86A.....	ad No 204, 2012 rep No 83, 2014
s 87.....	am No 132, 2011
s 88.....	am No 132, 2011
s 91.....	am No 132, 2011
s 93.....	am No 36, 2015
s 94A.....	ad No 14, 2023
s 95.....	am No 132, 2011; No 126, 2015; No 14, 2023
s 96.....	am No 132, 2011