



Australian National Registry of Emissions Units Act 2011

No. 99, 2011

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

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

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Simplified outline	2
4 Definitions	3
5 Electronic notice transmitted to the Administrator	10
6 Crown to be bound	11
7 Extension to external Territories	11
Part 2—Australian National Registry of Emissions Units	12
Division 1—Introduction	12
8 Simplified outline	12
Division 2—Australian National Registry of Emissions Units	13
9 Australian National Registry of Emissions Units	13
Division 3—Registry accounts	14
10 Registry accounts	14
11 Opening of Registry accounts—identification procedures	15
12 Designation of Commonwealth Registry accounts	15
13 Opening of new Commonwealth Registry accounts	16
14 Units in certain accounts cannot be transferred	16
15 Voluntary closure of Registry accounts	16
16 Unilateral closure of Registry accounts etc	16
Division 4—Entries in Registry accounts	19
17 Entries in Registry accounts	19
Division 5—Change in name of account holder	20
18 Change in name of account holder	20
Division 6—Correction and rectification of Registry	21
19 Corrections of clerical errors, obvious defects or unauthorised entries etc.	21
20 General power of correction of Registry—Kyoto units	22
21 General power of correction of Registry—non-Kyoto international emissions units	23
22 Rectification of Registry	23
Division 7—Miscellaneous	26
23 Making a false entry in the Registry	26
24 Falsified documents	26
25 Evidentiary provisions	26

26	Use and disclosure of information obtained from the Registry	27
27	Regulations about the Registry	28
28	Suspension of operation of the Registry	29
Part 3—Kyoto units		30
29	Simplified outline	30
30	Entries for Kyoto units	30
31	Issue of Australia’s assigned amount units	30
32	Issue of removal units	31
33	Transfer of Kyoto units	31
34	Domestic transfers of Kyoto units	32
35	Outgoing international transfers of Kyoto units	33
36	Incoming international transfers of Kyoto units	34
37	Compliance by Australia with emissions trading eligibility requirements under the Kyoto rules	35
38	Conversion of assigned amount units, or removal units, to emission reduction units—joint implementation projects etc.	36
39	Kyoto rules	37
40	Carry-over restrictions	37
41	Commitment period reserve	39
42	Cancellation of temporary certified emission reductions or long-term certified emission reductions	39
43	Replacement of long-term certified emission reductions	40
44	Restrictions on transfer of Kyoto units to a Commonwealth Registry account	41
45	A registered Kyoto unit is personal property for certain purposes	41
46	Equitable interests in relation to a Kyoto unit	42
47	Transmission of registered Kyoto units by operation of law etc.	42
Part 4—Non-Kyoto international emissions units		45
48	Simplified outline	45
49	Entries for non-Kyoto international emissions units	45
50	Transfer of non-Kyoto international emissions units	45
51	Domestic transfers of non-Kyoto international emissions units	46
52	Outgoing international transfers of non-Kyoto international emissions units	47
53	Incoming international transfers of non-Kyoto international emissions units	48
54	A registered non-Kyoto international emissions unit is personal property for certain purposes	48

55	Equitable interests in relation to a non-Kyoto international emissions unit	49
56	Transmission of registered non-Kyoto international emissions units by operation of law etc.	49
57	Regulations about non-Kyoto international emissions units	51
Part 5—Publication of information		52
58	Simplified outline	52
59	Information about holders of Registry accounts	52
60	Kyoto information	52
61	Publication of concise description of the characteristics of eligible international emissions units	53
62	Information about number of voluntarily cancelled Kyoto units	54
63	Information about number of voluntarily cancelled non-Kyoto international emissions units	54
Part 6—Voluntary cancellation of emissions units		55
64	Simplified outline	55
65	Voluntary cancellation of Kyoto units	55
66	Voluntary cancellation of non-Kyoto international emissions units	56
Part 7—Civil penalty orders		58
67	Simplified outline	58
68	References to Court	58
69	Civil penalty orders	58
70	Who may apply for a civil penalty order	59
71	Two or more proceedings may be heard together	60
72	Time limit for application for an order	60
73	Civil evidence and procedure rules for civil penalty orders	60
74	Civil proceedings after criminal proceedings	60
75	Criminal proceedings during civil proceedings	60
76	Criminal proceedings after civil proceedings	60
77	Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings	61
78	Mistake of fact	61
79	State of mind	62
80	Continuing contraventions	62
Part 8—Review of decisions		64
81	Simplified outline	64
82	Reviewable decisions	64

83	Applications for reconsideration of decisions made by delegates of the Administrator	65
84	Reconsideration by the Administrator	65
85	Deadline for reconsideration.....	66
86	Review by the Administrative Appeals Tribunal.....	66
Part 9—Miscellaneous		67
87	Computerised decision-making	67
88	Administrator’s power to require further information	67
89	Delegation by the Minister	68
90	Delegation by the Secretary.....	68
91	Liability for damages.....	68
92	Executive power of the Commonwealth.....	69
93	Notional payments by the Commonwealth.....	69
94	Compensation for acquisition of property	69
95	Prescribing matters by reference to other instruments	70
96	Administrative decisions under the regulations	70
97	Regulations.....	70



Australian National Registry of Emissions Units Act 2011

No. 99, 2011

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

[Assented to 15 September 2011]

The Parliament of Australia enacts:

Australian National Registry of Emissions Units Act 2011 No. 99, 2011 1

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 Administrator may, in accordance with the regulations, open a Registry account in the name of a person.
- Entries may be made in Registry accounts for:
 - (a) Australian carbon credit units; and
 - (b) Kyoto units; and
 - (c) non-Kyoto international emissions units.
- This Act sets out rules about dealings with:
 - (a) Kyoto units; and
 - (b) non-Kyoto international emissions units.

4 Definitions

In this Act:

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

Administrator means the Carbon Credits Administrator.

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.

Section 4

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

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 Administrator 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 non-Kyoto international emissions 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:

- (a) when used in relation to a Kyoto unit—means an account kept within a foreign Kyoto registry; or

Section 4

- (b) when used in relation to a non-Kyoto international emissions unit—means an account kept within a foreign non-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 non-Kyoto registry means a registry that:

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

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

international agreement means an agreement whose parties are:

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

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

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 *Legislative Instruments 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:

Section 4

- (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.

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.

non-Kyoto international emissions unit means:

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

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

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

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

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.

registered holder, in relation to:

- (a) an Australian carbon credit unit; or
- (b) a Kyoto unit; or
- (c) a non-Kyoto international emissions 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).

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.

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:

Section 5

- (a) in relation to a Kyoto unit—has the meaning given by section 33; or
- (b) in relation to a non-Kyoto international emissions unit—has the meaning given by section 50.

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 Administrator

- (1) For the purposes of this Act, a notice is an **electronic notice transmitted to the Administrator** if, and only if:
 - (a) the notice is transmitted to the Administrator by means of an electronic communication; and
 - (b) if the Administrator requires that the notice be transmitted, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the Administrator’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 Administrator 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 Administrator 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 subsections 14(3) and (4) 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 Administrator may, in accordance with the regulations, open a Registry account in the name of a person.
- A person may, in accordance with the regulations, request the Administrator to close the person's Registry account.
- The Administrator is empowered to make corrections to the Registry.
- A person may apply to the Federal Court for the rectification of the Registry.

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 Administrator.

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 Australian carbon 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 Administrator 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 Administrator 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 Administrator:
 - (i) to require a person who makes such a request to give the Administrator 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 Administrator before the Administrator 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 Administrator must not:
- (a) issue any Australian carbon credit units to the account; 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 Administrator to designate a Commonwealth Registry account as an account with a name specified in the regulations.

Section 13

13 Opening of new Commonwealth Registry accounts

The regulations may empower the Minister to direct the Administrator 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 Administrator 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 Administrator to close a Registry account unless:
 - (a) the person, by written notice given to the Administrator, requests the Administrator 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 non-Kyoto international emissions units in the account.

16 Unilateral closure of Registry accounts etc.

- (1) The regulations may make provision for and in relation to empowering the Administrator 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 Administrator 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 Administrator gives the person a written notice:
 - (i) stating that the Administrator proposes to close the account; and
 - (ii) setting out the effect of any regulations made for the purposes of subsections (3), (4), (5) and (6).

Cancellation or transfer of units

- (3) The regulations may provide that, if immediately before the Administrator 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 Administrator 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 Administrator must transfer the unit to a voluntary cancellation account.
- (5) The regulations may provide that, if immediately before the Administrator closes a Registry account under regulations made for the purposes of subsection (1), there is an entry for a non-Kyoto international emissions unit in the account, the unit is cancelled.

Refusal of request to open new Registry account

- (6) The regulations may provide that, if:
- (a) the Administrator 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 Administrator, under regulations made for the purposes of subsection 10(1), to open a Registry account in the name of the person;
- the Administrator must, under regulations made for the purposes of subsection 10(1), refuse the request.

Section 16

Record

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

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.

Non-Kyoto international emissions units

- (3) An entry for a non-Kyoto international emissions 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 Administrator to have the new name substituted for the previous name in the Registry in relation to the account;

the Administrator 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 Administrator 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 Administrator may exercise the power conferred by subsection (1):
 - (a) on written application being made to the Administrator by a person; or
 - (b) on the Administrator's own initiative.
- (3) The Administrator 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.

Publication of alteration

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

Refusal

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

Section 20

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

20 General power of correction of Registry—Kyoto units

Power of correction

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

Publication of alteration

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

Refusal

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

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

Power of correction

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

Publication of alteration

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

Refusal

- (4) If:
 - (a) the Administrator decides to refuse to alter the Registry under subsection (1); and
 - (b) the Administrator made the decision in response to an application;the Administrator 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;

Section 22

- (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 Administrator

- (2) If the Administrator 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 Administrator 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.
- (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 Administrator

- (6) Notice of an application under subsection (1) must be given to the Administrator, 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 Administrator

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

Compliance with order

- (8) The Administrator 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 Administrator may supply a copy of or extract from the Registry certified by the Administrator to be a true copy or true extract, as the case may be.
- (2) The certified copy or extract is admissible in evidence in all courts and proceedings without further proof or production of the original.
- (3) The Administrator may charge a fee specified in the regulations for supplying a certified copy or extract under subsection (1).

- (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.

Exception

- (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) non-Kyoto international emissions 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:
-

Section 27

- (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 Administrator.
- (3) Subsection (2) does not limit subsection (1).

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 Administrator may temporarily suspend the operation of the Registry if the Administrator 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 Administrator suspends the operation of the Registry, the Administrator must publish a notice on the Administrator's website informing the public of the suspension.
- (3) If the Administrator suspends the operation of the Registry, the Administrator may defer taking action in relation to the Registry until the suspension ends.

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

33 Transfer of Kyoto units

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

Section 34

- (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 Administrator, instruct the Administrator 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 Administrator receives an instruction under subsection (1):
- (a) if the Administrator 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 Administrator 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 Administrator must give effect to the instruction as soon as practicable after receiving it.
- (4) If the Administrator 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 Administrator, instruct the Administrator 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:

Section 36

- (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 Administrator receives an instruction under subsection (1):
 - (a) if the Administrator 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 Administrator 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 Administrator 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 Administrator to remove the entry for the unit or units from the relevant Registry account.
- (5) Subsection (4) does not limit section 39.
- (6) If the Administrator 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 Administrator 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 Administrator must make an entry for the Kyoto unit in the relevant Registry account.

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

- (2) However, the Administrator may refuse to make an entry for the Kyoto unit in the relevant Registry account if the Administrator 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;

Section 38

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.

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

Scope

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

Compliance with instruction

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

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

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
 - (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; or
 - (c) prevent, restrict or limit the giving of instructions under paragraph 38(1)(c).
- (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

Section 40

- (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 Administrator 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 Administrator 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.
- (4) Regulations made for the purposes of subsection (1) may prevent, restrict or limit the giving of instructions under paragraph 157(1)(b) of the *Carbon Credits (Carbon Farming Initiative) Act 2011*.
- (5) Regulations made for the purposes of subsection (1) may prevent, restrict or limit the giving of instructions under paragraph 38(1)(c).

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

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

Section 43

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 Administrator 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 Administrator 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.

Section 46

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.

Declaration of transmission

- (2) The transferee must, within 90 days after the transmission, give the Administrator:
 - (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 under regulations made for the purposes of subsection 10(1) for the Administrator to open a Registry account in the name of the transferee.

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

Transfer of unit—transferee already has a Registry account

- (7) If the transferee already has a Registry account, the Administrator 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 Administrator has opened a Registry account in the name of the transferee;
- the Administrator 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 Administrator 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);

Section 47

on behalf of the transferee.

Notification

(11) If:

(a) the Administrator 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 Administrator made the decision in response to an
application;

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

Part 4—Non-Kyoto international emissions units

48 Simplified outline

The following is a simplified outline of this Part:

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

49 Entries for non-Kyoto international emissions units

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

50 Transfer of non-Kyoto international emissions units

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

Section 51

- (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 non-Kyoto international emissions 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.

51 Domestic transfers of non-Kyoto international emissions units

- (1) If a person (the *first person*) is the registered holder of one or more non-Kyoto international emissions units, the person may, by electronic notice transmitted to the Administrator, instruct the Administrator 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:
- (a) the Administrator receives an instruction under subsection (1); and

- (b) the conditions (if any) specified in the regulations are satisfied;
the Administrator must give effect to the instruction as soon as practicable after receiving it.
- (4) If the Administrator 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.

52 Outgoing international transfers of non-Kyoto international emissions units

- (1) If a person (the *first person*) is the registered holder of one or more non-Kyoto international emissions units, the person may, by electronic notice transmitted to the Administrator, instruct the Administrator to transfer the units from the relevant Registry account kept by the person (the *first Registry account*) to:
 - (a) a foreign account kept by another person; or
 - (b) 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:
 - (a) the Administrator receives an instruction under subsection (1); and
 - (b) the conditions (if any) specified in the regulations are satisfied;the Administrator must take such steps as are required by the regulations.
- (4) Regulations made for the purposes of subsection (3) may require the Administrator to remove the entry for the unit or units from the relevant Registry account.

Section 53

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

53 Incoming international transfers of non-Kyoto international emissions units

- (1) If:
 - (a) the Administrator receives an instruction for the transfer of a non-Kyoto international emissions unit from a foreign account; and
 - (b) the conditions (if any) specified in the regulations are satisfied;the Administrator must make an entry for the non-Kyoto international emissions unit in the relevant Registry account.
- (2) However, the Administrator may refuse to make an entry for the non-Kyoto international emissions unit in the relevant Registry account if the Administrator has reasonable grounds to suspect that the instruction is fraudulent.
- (3) If the Administrator decides to refuse to make an entry for the non-Kyoto international emissions unit in the relevant Registry account, the Administrator must give written notice of the decision to the person who gave the instruction.

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

Scope

- (1) This section applies if there is an entry for a non-Kyoto international emissions 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 56 of this Act, is transmissible by will and by devolution by operation of law.

55 Equitable interests in relation to a non-Kyoto international emissions 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 non-Kyoto international emissions unit.
- (2) Subsection (1) is enacted for the avoidance of doubt.

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

Scope

- (1) This section applies if:
 - (a) under section 54, a non-Kyoto international emissions 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.

Declaration of transmission

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

Section 56

- (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 under regulations made for the purposes of subsection 10(1) for the Administrator to open a Registry account in the name of the transferee.
- (5) If the Administrator is satisfied that special circumstances warrant the extension of the 90-day period mentioned in subsection (2), the Administrator may extend that period.
- (6) The Administrator may exercise the power conferred by subsection (5):
 - (a) on written application being made to the Administrator by the transferee; or
 - (b) on the Administrator's own initiative.

Transfer of unit—transferee already has a Registry account

- (7) If the transferee already has a Registry account, the Administrator 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 Administrator has opened a Registry account in the name of the transferee;the Administrator 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 Administrator 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 Administrator 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 Administrator made the decision in response to an application;
- the Administrator must give written notice of the decision to the applicant.

57 Regulations about non-Kyoto international emissions units

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

Part 5—Publication of information

58 Simplified outline

The following is a simplified outline of this Part:

- The Administrator must publish certain information about:
 - (a) the holders of Registry accounts; and
 - (b) Kyoto units; and
 - (c) non-Kyoto international emissions units.

59 Information about holders of Registry accounts

The Administrator must:

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

60 Kyoto information

- (1) The regulations may make provision for, or in relation to, requiring the Administrator to publish on the Administrator'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 Administrator to:
 - (a) publish on the Administrator'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.

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

- (1) The Administrator must:
 - (a) within 30 days after the commencement of this section, publish on the Administrator's website a statement setting out a concise description of the characteristics of each of the following types of eligible international emissions units:
 - (i) certified emission reductions (other than a temporary certified emission reduction or a long-term certified emission reduction);
 - (ii) emission reduction units;
 - (iii) removal units; and
 - (b) keep that statement up-to-date.
- (2) The Administrator must:
 - (a) within 30 days after the commencement of regulations made for the purposes of paragraph (d) of the definition of ***eligible international emissions unit*** in section 4, publish on the Administrator's website a statement setting out a concise description of the characteristics of units prescribed by those regulations; and
 - (b) keep that statement up-to-date.

Non-Kyoto units

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

Section 62

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

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 Administrator must publish on the Administrator's website:

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

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

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

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

Part 6—Voluntary cancellation of emissions units

64 Simplified outline

The following is a simplified outline of this Part:

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

65 Voluntary cancellation of Kyoto units

- (1) If a person is the registered holder of one or more Kyoto units, the person may, by electronic notice transmitted to the Administrator, request the Administrator to transfer to a voluntary cancellation account any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the Kyoto unit or units that are to be transferred to the voluntary cancellation account; and
 - (b) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the Kyoto unit or units that are to be transferred to the voluntary cancellation account.
- (3) If:
 - (a) a person requests that a Kyoto unit be transferred to a voluntary cancellation account; and
 - (b) the Administrator is satisfied that the transfer of the unit from the person's Registry account to the voluntary cancellation

Section 66

account would not breach regulations made for the purposes of section 39 (Kyoto rules); and

- (c) the Administrator is satisfied that the transfer of the unit from the person's Registry account to the voluntary cancellation account would not breach regulations made for the purposes of section 41 (commitment period reserve);

the Administrator 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 non-Kyoto international emissions units

- (1) If a person is the registered holder of one or more non-Kyoto international emissions units, the person may, by electronic notice transmitted to the Administrator, request the Administrator to cancel any or all of those units.
- (2) A notice under subsection (1) must:
- (a) specify the non-Kyoto international emissions 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 non-Kyoto international emissions unit or units that are to be cancelled.
- (3) If the Administrator receives a notice under subsection (1) in relation to a non-Kyoto international emissions unit:
- (a) if the regulations require the Administrator to cancel the unit—the Administrator must cancel the unit; and
 - (b) if the regulations require the Administrator to take specified action in relation to the unit—the Administrator must take that action; and
 - (c) the Administrator 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).

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

Section 71

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:
 - (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

Section 79

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

82 Reviewable decisions

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

Reviewable decisions	
Item	Decision
1	A decision to refuse to extend a period under subsection 47(5).
2	A decision to refuse to make an entry in a Registry account under section 36 or 53.
3	A decision to refuse to extend a period under subsection 56(5).
4	A decision under regulations made for the purposes of subsection 10(1) to refuse to open a Registry account.
5	A decision under regulations made for the purposes of subsection 16(1) to close a Registry account.
6	A decision under section 19 to alter the Registry.
7	A decision to refuse to alter the Registry under section 19.
8	A decision under section 20 or 21 to make an alteration to the Registry.
9	A decision to refuse to make an alteration to the Registry under section 20 or 21.

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

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

Application

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the Administrator for the Administrator to reconsider the decision.
- (3) The application must:
 - (a) be in a form approved in writing by the Administrator; and
 - (b) set out the reasons for the application; and
 - (c) be accompanied by the fee (if any) specified in the regulations.
- (4) The application must be made within:
 - (a) 28 days after the applicant is informed of the decision; or
 - (b) if, either before or after the end of that period of 28 days, the Administrator extends the period within which the application may be made—the extended period.
- (5) An approved form of an application may provide for verification by statutory declaration of statements in applications.
- (6) A fee specified under paragraph (3)(c) must not be such as to amount to taxation.

84 Reconsideration by the Administrator

- (1) Upon receiving such an application, the Administrator must:
 - (a) reconsider the decision; and
 - (b) affirm, vary or revoke the decision.
- (2) The Administrator'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.

Section 85

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

85 Deadline for reconsideration

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

86 Review by the Administrative Appeals Tribunal

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

Part 9—Miscellaneous

87 Computerised decision-making

- (1) The Administrator may, by legislative instrument, arrange for the use, under the Administrator's control, of computer programs for any purposes for which the Administrator 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 Administrator 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 Administrator's power to require further information

If:

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

the Administrator:

- (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.

Section 89

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 Administrator;
- (f) a delegate of the Administrator;

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 *Financial Management and Accountability Act 1997* may give written directions for the purposes of this section, including directions relating to the transfer of amounts within, or between, accounts operated by the Commonwealth.

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.

Section 95

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

95 Prescribing 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 *Legislative Instruments 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 Administrator must ensure that the text of the matter applied, adopted or incorporated is published on the Administrator'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 Administrator.

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.

*[Minister's second reading speech made in—
House of Representatives on 24 March 2011
Senate on 20 June 2011]*

(45/11)

Australian National Registry of Emissions Units Act 2011 No. 99, 2011 71