



Carbon Credits (Carbon Farming Initiative) Act 2011

No. 101, 2011

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

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

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Carbon Credits (Carbon Farming Initiative) Act 2011

No. 101, 2011

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

[Assented to 15 September 2011]

The Parliament of Australia enacts:

Carbon Credits (Carbon Farming Initiative) Act 2011 No. 101, 2011 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Carbon Credits (Carbon Farming Initiative) 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 307	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the later of: (a) the day the <i>Australian National Registry of Emissions Units Act 2011</i> receives the Royal Assent; and (b) the day the <i>Carbon Credits (Consequential Amendments) Act 2011</i> receives the Royal Assent. However, if any of the provision(s) do not commence within the period of 6 months beginning on the later of: (c) the day the <i>Australian National Registry of Emissions Units Act 2011</i> receives the Royal Assent; and	8 December 2011 (see F2011L02581)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	(d) the day the <i>Carbon Credits (Consequential Amendments) Act 2011</i> receives the Royal Assent; they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Objects

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

Climate Change Convention and Kyoto Protocol

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

Incentives

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

Carbon abatement

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

4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up a scheme for the issue of Australian carbon credit units in relation to eligible offsets projects.
- An Australian carbon credit unit is personal property and is generally transferable.
- The main eligibility requirements for eligible offsets projects are as follows:
 - (a) the project must be carried out in Australia;
 - (b) the project must be covered by a methodology determination made under this Act.
- A methodology determination must comply with the offsets integrity standards set out in this Act.
- This Act is administered by the Carbon Credits Administrator.

5 Definitions

In this Act:

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

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

additionality test has the meaning given by section 41.

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

Administrator means the Carbon Credits Administrator.

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

- (a) an emission of methane from the digestive tract of livestock;
- (b) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the decomposition of:
 - (iii) livestock urine; or
 - (iv) livestock dung;
- (c) an emission of methane from:
 - (i) rice fields; or
 - (ii) rice plants;
- (d) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the burning of:
 - (iii) savannas; or
 - (iv) grasslands;
- (e) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from the burning of:
 - (iii) crop stubble in fields; or
 - (iv) crop residues in fields; or
 - (v) sugar cane before harvest;
- (f) an emission of:
 - (i) methane; or
 - (ii) nitrous oxide;from soil.

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

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

Section 5

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

applicable methodology determination, in relation to an offsets project, means the methodology determination that is applicable to the project.

Note: See also sections 124 to 130.

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

associated provisions means the following provisions:

- (a) the provisions of the regulations;
- (b) sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as those sections relate to:
 - (i) this Act; or
 - (ii) the regulations.

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

- (a) paragraph 13(1)(e);
- (b) paragraph 23(1)(d);
- (c) paragraph 76(4)(c);
- (d) section 214;
- (e) section 215.

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

Australian carbon credit unit means a unit issued under section 147.

Australian police force means:

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

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

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

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

Biodiversity Convention means the Convention on Biological Diversity, done at Rio de Janeiro on 5 June 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 1993 No. 32 ([1993] ATS 32). 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).

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

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

certificate of entitlement means a certificate issued under section 15.

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

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

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

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

Section 5

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

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

Commonwealth relinquished units account means the Commonwealth Registry account designated as the Commonwealth relinquished units account.

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

- (a) the first crediting period for the project, worked out under section 69; or
- (b) a subsequent crediting period for the project, determined under section 74.

Crown land means land that is the property of:

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

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

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

Crown lands Minister:

- (a) in relation to a State—means the Minister of the State who, under the regulations, is taken to be the Crown lands Minister of the State; or

- (b) in relation to the Northern Territory—means the Minister of the Northern Territory who, under the regulations, is taken to be the Crown lands Minister of the Northern Territory; or
- (c) in relation to the Australian Capital Territory—means the Minister of the Australian Capital Territory who, under the regulations, is taken to be the Crown lands Minister of the Australian Capital Territory; or
- (d) in relation to a Territory other than the Northern Territory or the Australian Capital Territory—means the person who, under the regulations, is taken to be the Crown lands Minister of the Territory.

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

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

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

Domestic Offsets Integrity Committee member means a member of the Domestic Offsets Integrity Committee, and includes the Chair of the Domestic Offsets Integrity Committee.

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 7.

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

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

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

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

eligible voluntary action means:

- (a) making an application; or
- (b) giving information in connection with an application; or
- (c) withdrawing an application; or
- (d) giving a notice (including an electronic notice); or
- (e) making a submission; or
- (f) making a request; or
- (g) giving information in connection with a request;

to the Administrator, where the application, information, notice, submission or request is permitted, but not required, to be made, given or withdrawn, as the case may be, under this Act or the regulations.

emission of greenhouse gas means the release of greenhouse gas into the atmosphere.

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

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

engage in conduct means:

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

entrusted public official means:

- (a) the Administrator; or
- (b) a delegate of the Administrator; or
- (c) a person assisting the Administrator under section 250; or
- (d) a person whose services are made available to the Administrator under section 251; or
- (e) a person engaged as a consultant under section 252; or
- (f) an audit team leader; or
- (g) a person assisting an audit team leader; or
- (h) a Domestic Offsets Integrity Committee member; or

- (i) a person assisting the Domestic Offsets Integrity Committee under section 269.

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.

excluded offsets project has the meaning given by section 56.

exclusive possession native title land means native title land, where the native title confers a right of exclusive possession over the land.

executive officer of a body corporate means:

- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

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

Federal Court means the Federal Court of Australia.

foreign account, when used in relation to an Australian carbon credit 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.

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

freehold land rights land means land, where:

- (a) a freehold estate exists over the land, and the grant of the freehold estate took place under a law of a State or a Territory that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (b) a freehold estate exists over the land, and the grant of the freehold estate took place under a law of the Commonwealth that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (c) the land is vested in a person, and the vesting took place under a law of the Commonwealth that makes provision for the vesting of land only in, or for the benefit of, Aboriginal peoples or Torres Strait Islanders.

general law land means land other than:

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

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

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

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

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

inspector means a person appointed as an inspector under section 196.

Interim Domestic Offsets Integrity Committee means the committee that was:

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

international agreement means an agreement whose parties are:

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

introduced animal means an animal other than:

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

introduced animal emissions avoidance project means:

- (a) a project to avoid emissions of methane from the digestive tract of an introduced animal; or
- (b) a project to avoid emissions of:
 - (i) methane; or
 - (ii) nitrous oxide;from the decomposition of:
 - (iii) introduced animal urine; or
 - (iv) introduced animal dung.

Note: See also section 303.

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

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

Kyoto abatement deadline means:

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

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

Kyoto offsets project has the meaning given by section 55.

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

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

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

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

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

- (a) if the land rights land is covered by paragraph (a) of the definition of ***land rights land***—the person who holds the freehold estate, or the lease, mentioned in that paragraph; or
- (b) if the land rights land is covered by paragraph (b) of the definition of ***land rights land***—the person in whom the land is vested as mentioned in that paragraph; or
- (c) if the land rights land is covered by paragraph (c) of the definition of ***land rights land***—the person who holds the land as mentioned in that paragraph; or
- (d) if the land rights land is covered by paragraph (d) of the definition of ***land rights land***—the person who holds the land reserved as mentioned in that paragraph; or

- (e) if the land rights land is covered by paragraph (e) of the definition of **land rights land**—a person specified in the regulations.

land rights land means land, where:

- (a) a freehold estate exists, or a lease is in force, over the land, where the grant of the freehold estate or lease took place under legislation that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (b) the land is vested in a person, where the vesting took place under legislation that makes provision for the vesting of land only in, or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (c) neither paragraph (a) nor (b) applies, and the land is held expressly for the benefit of, or is held in trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (d) the land is reserved expressly for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (e) the land is specified in the regulations.

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

lease, in relation to land rights land, includes:

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

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

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

methodology determination has the meaning given by section 106.

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monitoring powers has the meaning given by section 199.

monitoring warrant means a warrant issued under section 211.

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

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

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

native forest means an area of land that:

- (a) is dominated by trees that:
 - (i) are located within their natural range; and
 - (ii) have attained, or have the potential to attain, a crown cover of at least 20% of the area of land; and
 - (iii) have reached, or have the potential to reach, a height of at least 2 metres; and
- (b) is not a plantation.

It is immaterial whether any of the trees have been established with human assistance following any of the following events:

- (c) flood;
- (b) bushfire;
- (d) drought;
- (e) pest attack;
- (f) disease;
- (g) an event specified in the regulations.

The regulations may provide that, for the purposes of this definition, **trees** and **crown cover** have the respective meanings given by the regulations.

native forest protection project means a project:

- (a) to remove carbon dioxide from the atmosphere by sequestering carbon in trees in one or more native forests; and
- (b) to avoid emissions of greenhouse gases attributable to the clearing or clear-felling of one or more native forests.

native title has the same meaning as in the *Native Title Act 1993*.

native title holder has the same meaning as in the *Native Title Act 1993*.

native title land: an area of land is **native title land** if there is an entry on the National Native Title Register specifying that native title exists in relation to the area.

natural disturbance, in relation to an eligible offsets project, means any of the following events, where the event could not reasonably be prevented by the project proponent for the project:

- (a) flood;
- (b) bushfire;
- (c) drought;
- (d) pest attack;
- (e) disease;
- (f) an event specified in the regulations.

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

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

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

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

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

offsets integrity standards has the meaning given by section 133.

offsets project means:

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

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

offsets report means a report under section 76.

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

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

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

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

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.

person assisting an inspector has the meaning given by section 200.

premises includes the following:

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

prescribed eligible carbon unit means a prescribed unit that is issued under a scheme relating to either or both of the following:

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

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

prescribed native forest protection project means a native forest protection project that meets the requirements specified in regulations made for the purposes of this definition.

prescribed non-CFI offsets scheme has the meaning given by the regulations.

project includes a set of activities.

project area, in relation an offsets project, means an area of land on which the project has been, is being, or is to be, carried out.

project proponent:

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

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

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

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

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

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

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

protected information means information that:

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

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

recognised as an offsets entity means recognised under section 64.

recognised offsets entity means a person recognised as an offsets entity.

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

regional natural resource management plan means a plan prepared by a regional natural resource management organisation.

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

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

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

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

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

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

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

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

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

- (a) relates to, or to an element of, the project; and
- (b) is required under a law of the Commonwealth, a State or Territory that relates to:
 - (i) land use or development; or
 - (ii) the environment; or
 - (iii) water.

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

- (a) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular living biomass—means the biomass; or
- (b) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular dead organic matter—means the dead organic matter; or
- (c) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular soil—means the soil.

relevant land registration official:

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

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

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

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

Note: See section 76.

reviewable decision has the meaning given by section 240.

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

scheme, when used in Part 22, means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

Secretary means the Secretary of the Department.

sequestration offsets project has the meaning given by section 54.

special native title account means a Registry account designated as a special native title account under subsection 48(6).

statutory authority of the Commonwealth, a State or a Territory, means an authority or body (including a corporation sole) established by or under a law of the Commonwealth, the State or the Territory (other than a general law allowing incorporation as a company or body corporate), but does not include:

- (a) an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
- (b) the Wreck Bay Aboriginal Community Council established by the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*; or
- (c) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
- (d) an authority or body that is:

- (i) established by or under a law of the Commonwealth, a State or a Territory; and
- (ii) specified in the regulations.

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

Torrens system land: land is **Torrens system land** if the title to the land is registered under a Torrens system of registration.

Torres Strait Islander has the same meaning as in the *Native Title Act 1993*.

transfer:

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

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

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

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

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

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

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

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

For the purposes of a reference in:

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- (a) this Act to a *vacancy* in the office of a Domestic Offsets Integrity Committee member; or
 - (b) the *Acts Interpretation Act 1901* to a *vacancy* in the membership of a body;
- there are taken to be 4 offices of member of the Domestic Offsets Integrity Committee in addition to the Chair of the Domestic Offsets Integrity Committee.

7 Electronic notice transmitted to the Administrator

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

8 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.
- (4) The protection in subsection (2) does not apply to a penalty under section 179 or 180.

9 Extension to external Territories

This Act extends to every external Territory.

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

Division 1—Introduction

10 Simplified outline

The following is a simplified outline of this Part:

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

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

11 Issue of Australian carbon credit units in respect of offsets projects

Scope

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

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

Issue of units

- (2) If:
- (a) the project is an eligible Kyoto project; and
 - (b) the reporting period ends on or before the Kyoto abatement deadline;

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

- (3) If:
- (a) the project is an eligible non-Kyoto project; and
 - (b) the reporting period ends on or before the Kyoto abatement deadline;

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

- (4) If the reporting period ends after the Kyoto abatement deadline, the Administrator must, as soon as practicable after the day on which the certificate was issued, issue to the holder of the certificate a

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

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

Section 11

number of non-Kyoto Australian carbon credit units equal to the number specified in the certificate as the unit entitlement for that certificate.

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

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

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

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

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

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

Division 3—Certificate of entitlement

12 Application for certificate of entitlement

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

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

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

13 Form of application

- (1) An application must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Administrator; and
 - (c) set out the account number of a Registry account of the applicant that should be specified in the certificate; and
 - (d) be accompanied by such information as is specified in the regulations; and
 - (e) be accompanied by a prescribed audit report prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (f) be accompanied by the offsets report about the project for the relevant reporting period; and
 - (g) be accompanied by such other documents (if any) as are specified in the regulations; and
 - (h) be accompanied by the fee (if any) specified in the regulations.

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

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

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

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

14 Further information

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

15 Issue of certificate of entitlement

Scope

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

Issue of certificate

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

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

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

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

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

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

Timing

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

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

Refusal

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

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

Scope

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

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

Unit entitlement

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

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

where:

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

risk of reversal buffer number means:

- (a) 5%; or
(b) if:
(i) at the start of the crediting period in which the reporting period is included, another percentage is specified in the regulations in relation to a particular kind of project;
and

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

17 Unit entitlement—native forest protection projects

Scope

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

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

Unit entitlement—prescribed native forest protection projects

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

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

where:

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

risk of reversal buffer number means:

- (a) 5%; or
(b) if:
(i) at the start of the crediting period in which the reporting period is included, another percentage is specified in the

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regulations in relation to a particular kind of project;
and

(ii) the project is of that kind;

that other percentage;

of the net sequestration number.

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

Unit entitlement—other native forest protection projects

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

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

where:

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

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

reporting period number means the number of years in the reporting period.

risk of reversal buffer number means:

(a) 5%; or

(b) if:

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

(ii) the project is of that kind;

that other percentage;
of the net sequestration number.

Rounding down

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

18 Unit entitlement—emissions avoidance offsets project

Scope

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

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

Unit entitlement

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

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

Scope

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

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

Division 3 Certificate of entitlement

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

Automatic cancellation

- (2) Immediately after the issue of the unit:
- (a) the unit is cancelled; and
 - (b) the Administrator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit; and
 - (c) if the unit is a Kyoto Australian carbon credit unit:
 - (i) the Minister must, by written notice given to the Administrator, direct the Administrator to transfer a Kyoto unit from a Commonwealth holding account to a voluntary cancellation account before the end of the true-up period for the relevant commitment period; and
 - (ii) the Administrator must comply with a direction under subparagraph (i).
- (3) The Registry must set out a record of each cancellation under subsection (2).

No transfer

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

20 Certificate of entitlement not transferable

A certificate of entitlement is not transferable.

Part 3—Eligible offsets projects

Division 1—Introduction

21 Simplified outline

The following is a simplified outline of this Part:

- The Administrator may declare an offsets project to be an eligible offsets project.
- The Administrator may vary or revoke a declaration of an eligible offsets project.

Division 2—Declaration of eligible offsets project

22 Application for declaration of eligible offsets project

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

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

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

23 Form of application

- (1) An application must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Administrator; and
 - (c) be accompanied by such information as is specified in the regulations; and
 - (d) if the project is of a kind specified in the regulations—be accompanied by a prescribed audit report prepared by a registered greenhouse and energy auditor who has been appointed as an audit team leader for the purpose; and
 - (e) if:
 - (i) the project area for the project was, or the project areas for the project were, wholly or partly covered by a prescribed non-CFI offsets scheme; and
 - (ii) the applicant is entitled to make a request under section 92 in relation to the project;
be accompanied by such a request; and
 - (f) if an indigenous land use agreement is relevant to the Administrator's decision on the application—be accompanied by a copy of the agreement; and
 - (g) if the project area, or any of the project areas, for the project is covered by a regional natural resource management plan—be accompanied by a statement about whether the project is consistent with the plan; and

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

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

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

24 Further information

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

25 Withdrawal of application

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

Part 3 Eligible offsets projects

Division 2 Declaration of eligible offsets project

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- (2) This Act does not prevent the applicant from making a fresh application.
- (3) If:
 - (a) the applicant withdraws the application; and
 - (b) the applicant has paid a fee in relation to the application; the Administrator must, on behalf of the Commonwealth, refund the application fee.

26 Application may be split

Scope

- (1) This section applies if:
 - (a) an application under section 22 has been made, or purportedly made, for a declaration of an offsets project as an eligible offsets project; and
 - (b) the Administrator is satisfied that the application relates to 2 or more offsets projects.

Note: See also subsection 55(6).

Application may be split

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

27 Declaration of eligible offsets project

Scope

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

Declaration

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

- (a) declare that the offsets project is:
 - (i) an *eligible offsets project* for the purposes of this Act; and
 - (ii) an *eligible Kyoto project* for the purposes of this Act; and
 - (b) declare that the offsets project is:
 - (i) an *eligible offsets project* for the purposes of this Act; and
 - (ii) an *eligible non-Kyoto project* for the purposes of this Act.
- (3) A declaration under subsection (2) must:
- (a) identify the name of the project; and
 - (b) identify, in accordance with the regulations, the project area or project areas; and
 - (c) identify the project proponent for the project; and
 - (d) identify such attributes of the project as are specified in the regulations; and
 - (e) if the application included a statement to the effect that the project should be subject to the voluntary automatic unit cancellation regime—declare that the project is subject to the voluntary automatic unit cancellation regime.

Criteria for declaration

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

Part 3 Eligible offsets projects

Division 2 Declaration of eligible offsets project

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- (i) the project is a sequestration offsets project; and
 - (ii) the project area is, or any of the project areas are, Crown land in a State or Territory; and
 - (iii) the project area is not, or the project areas are not, Torrens system land; and
 - (iv) the project area is not, or the project areas are not, the property of the Commonwealth; and
 - (v) the project area is not, or the project areas are not, freehold land rights land; and
 - (vi) the applicant is not the State or Territory;
the Crown lands Minister of the State or Territory has certified in writing that:
 - (vii) the applicant holds the applicable carbon sequestration right in relation to the project area or project areas; and
 - (viii) the State or Territory will not deal with the project area or project areas in a way that is inconsistent with the applicable carbon sequestration right; and
 - (ix) if another person is required to obtain the consent of the State or Territory to a dealing with the project area or project areas—the State or Territory will not give that consent in a way that is inconsistent with the applicable carbon sequestration right; and
- (i) if:
- (i) the project is a sequestration offsets project; and
 - (ii) the project area is, or any of the project areas are, Crown land; and
 - (iii) the project area is, or the project areas are, the property of the Commonwealth;
 - (iv) the project area is not, or the project areas are not, freehold land rights land; and
- the Minister has certified in writing that:
- (v) the applicant holds the applicable carbon sequestration right in relation to the project area or project areas; and
 - (vi) the Commonwealth will not deal with the project area or project areas in a way that is inconsistent with the applicable carbon sequestration right; and

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

Note 1: Methodology determinations are made under section 106.

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

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

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

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

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

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

Timing

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

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

When a declaration takes effect

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

Notification of declaration

- (17) As soon as practicable after making a declaration under subsection (2), the Administrator must give a copy of the declaration to:
 - (a) the applicant; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Refusal

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

Registered indigenous land use agreements

- (19) If:
-

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Division 2 Declaration of eligible offsets project

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- (a) a declaration under subsection (2) is in force; and
- (b) a relevant consent under paragraph (4)(k) was set out in a registered indigenous land use agreement;

details of the agreement must not be removed from the Register of Indigenous Land Use Agreements under subparagraph 199C(1)(c)(ii) of the *Native Title Act 1993* without the written consent of the Administrator.

Declaration is not legislative instrument

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

28 Declaration may be subject to condition about obtaining regulatory approvals

Scope

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

Condition

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

Division 3—Variation of declaration of eligible offsets project

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

Regulations

- (1) The regulations may make provision for and in relation to empowering the Administrator to vary a declaration under section 27 in relation to an offsets project so far as the declaration identifies the project area or project areas.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to vary a declaration unless the project proponent for the project applies to the Administrator for the variation of the declaration.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to any or all of the following matters:
 - (a) applications for variations under those regulations;
 - (b) the approval by the Administrator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) consents that must be obtained for the making of such an application;
 - (g) authorising a person to issue a certificate in relation to such an application;
 - (h) requiring such an application to be accompanied by a statement about consistency with a regional natural resource management plan (if any) that covers the project area or any of the project areas;
 - (i) the fee (if any) that must accompany such an application;

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- (j) the withdrawal of such an application;
 - (k) empowering the Administrator:
 - (i) to require an applicant to give the Administrator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (4) Subsection (3) does not limit subsection (1).
- (5) A fee mentioned in paragraph (3)(i) must not be such as to amount to taxation.
- (6) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations, the Administrator must give a copy of the variation to:
- (a) the applicant for the variation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.
- (7) Regulations made for the purposes of subsection (1) must provide that, if the Administrator decides to refuse to vary a declaration of an eligible offsets project in accordance with an application for variation under those regulations, the Administrator must give written notice of the decision to the applicant for the variation.

Registered indigenous land use agreements

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

References to eligible offsets project

- (9) If a declaration of an eligible offsets project is varied in accordance with regulations made for the purposes of subsection (1), a reference in this Act or the regulations to the eligible offsets project is a reference to the eligible offsets project as varied.

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

Regulations

- (1) The regulations may make provision for and in relation to empowering the Administrator to vary a declaration under section 27 in relation to an offsets project so far as the declaration identifies the project proponent for the project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to vary a declaration unless the project proponent for the project applies to the Administrator for the variation of the declaration.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to any or all of the following matters:
- (a) applications for variations under those regulations;
 - (b) the approval by the Administrator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) the fee (if any) that must accompany such an application;
 - (g) the withdrawal of such an application;
 - (h) empowering the Administrator:
 - (i) to require an applicant to give the Administrator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application;

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- (i) empowering the Administrator to require the applicant to give security to the Commonwealth in relation to the fulfilment by the applicant of any requirements to relinquish Australian carbon credit units that may be imposed on the applicant under this Part in relation to the project.
- (4) Subsection (3) does not limit subsection (1).
- (5) A fee mentioned in paragraph (3)(f) must not be such as to amount to taxation.
- (6) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations, the Administrator must give a copy of the variation to:
 - (a) the applicant for the variation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.
- (7) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations, the variation takes effect:
 - (a) when it is made; or
 - (b) if:
 - (i) the Administrator makes a written determination specifying an earlier day; and
 - (ii) the applicant for the variation has consented to the determination of the earlier day;on the day so determined.
- (8) A determination made under subparagraph (7)(b)(i) is not a legislative instrument.
- (9) Regulations made for the purposes of subsection (1) must provide that, if the Administrator decides to refuse to vary a declaration of an eligible offsets project in accordance with an application for variation under those regulations, the Administrator must give written notice of the decision to the applicant for the variation.

References to eligible offsets project

- (10) If a declaration of an eligible offsets project is varied in accordance with regulations made for the purposes of subsection (1), a reference in this Act or the regulations to the eligible offsets project is a reference to the eligible offsets project as varied.

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

Scope

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

Regulations

- (2) The regulations may make provision for and in relation to empowering the Administrator to vary such a declaration by removing such a condition.
- (3) Regulations made for the purposes of subsection (2) must not empower the Administrator to vary a declaration unless:
- (a) the project proponent for the project applies to the Administrator for the variation of the declaration; and
 - (b) the Administrator is satisfied that the condition has been met.
- (4) Regulations made for the purposes of subsection (2) may make provision for or in relation to any or all of the following matters:
- (a) applications for variations under those regulations;
 - (b) the approval by the Administrator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) the fee (if any) that must accompany such an application;
 - (g) the withdrawal of such an application;

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- (h) empowering the Administrator:
 - (i) to require an applicant to give the Administrator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (5) Subsection (4) does not limit subsection (2).
- (6) A fee mentioned in paragraph (4)(f) must not be such as to amount to taxation.
- (7) Regulations made for the purposes of subsection (2) must provide that, if a declaration of an eligible offsets project is varied in accordance with those regulations, the Administrator must give a copy of the variation to:
 - (a) the applicant for the variation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.
- (8) Regulations made for the purposes of subsection (2) must provide that, if the Administrator decides to refuse to vary a declaration of an eligible offsets project in accordance with an application for variation under those regulations, the Administrator must give written notice of the decision to the applicant for the variation.

References to eligible offsets project

- (9) If a declaration of an eligible offsets project is varied in accordance with regulations made for the purposes of subsection (2), a reference in this Act or the regulations to the eligible offsets project is a reference to the eligible offsets project as varied.

Division 4—Revocation of declaration of eligible offsets project

Subdivision A—Voluntary revocation of declaration of eligible offsets project

32 Voluntary revocation of declaration of eligible offsets project—units issued

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

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

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

Part 3 Eligible offsets projects

Division 4 Revocation of declaration of eligible offsets project

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- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to either or both of the following matters:
 - (a) applications for revocations under those regulations;
 - (b) the approval by the Administrator of a form for such an application.
- (4) Subsection (3) does not limit subsection (1).
- (5) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations, the Administrator must give a copy of the revocation to:
 - (a) the applicant for the revocation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

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

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless:
 - (a) no Australian carbon credit units have been issued in relation to the project in accordance with Part 2; and
 - (b) the project proponent for the project applies to the Administrator for the revocation of the declaration.
- (3) Regulations made for the purposes of subsection (1) may make provision for or in relation to either or both of the following matters:
 - (a) applications for revocations under those regulations;
 - (b) the approval by the Administrator of a form for such an application.
- (4) Subsection (3) does not limit subsection (1).

- (5) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations, the Administrator must give a copy of the revocation to:
 - (a) the applicant for the revocation; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Subdivision B—Unilateral revocation of declaration of eligible offsets project

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

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless:
 - (a) the declaration is subject to the condition that all regulatory approvals for the project must be obtained before the end of the first crediting period for the project; and
 - (b) the Administrator is satisfied that the condition has not been met.
- (3) Regulations made for the purposes of subsection (1) must require the Administrator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations, the Administrator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

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

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless the Administrator is satisfied that the project does not meet a requirement that is:
 - (a) set out in subsection 27(4); and
 - (b) specified in regulations made for the purposes of this paragraph.
- (3) Regulations made for the purposes of subsection (1) must require the Administrator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations, the Administrator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

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

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless:
 - (a) the project proponent for the project ceases to be a recognised offsets entity; and

- (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is the project proponent for the project is not a recognised offsets entity.
- (3) Regulations made for the purposes of subsection (1) must require the Administrator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations, the Administrator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

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

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless:
 - (a) the person who is responsible for carrying out the project ceases to be the project proponent for the project; and
 - (b) 90 days pass after the cessation, and the person who, at the end of that 90-day period, is responsible for carrying out the project is not:
 - (i) the project proponent for the project; and
 - (ii) a recognised offsets entity.
- (3) Regulations made for the purposes of subsection (1) must require the Administrator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in

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

- (a) the person who is responsible for carrying out the project; and
- (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

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

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless:
 - (a) information was given by a person to the Administrator in connection with the project; and
 - (b) the information was:
 - (i) contained in an application under this Act or the regulations; or
 - (ii) given in connection with an application under this Act or the regulations; or
 - (iii) contained in an offsets report; or
 - (iv) contained in a notification under Part 6; and
 - (c) the information was false or misleading in a material particular.
- (3) Regulations made for the purposes of subsection (1) must require the Administrator to consult the project proponent for the project before deciding to revoke a declaration.
- (4) Regulations made for the purposes of subsection (1) must provide that, if a declaration of an eligible offsets project is revoked in accordance with those regulations, the Administrator must give a copy of the revocation to:
 - (a) the project proponent; and
 - (b) if the declaration relates to a sequestration offsets project—the relevant land registration official.

Division 5—Entries in title registers

39 Entries in title registers—general

Scope

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

Entries

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

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

Scope

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

Entries

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

Division 6—Additionality test

41 Additionality test

- (1) For the purposes of this Act, an offsets project *passes the additionality test* if:
 - (a) the project is of a kind specified in the regulations; and
 - (b) the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory.
- (2) Before recommending to the Governor-General that regulations should be made for the purposes of paragraph (1)(a) specifying a particular kind of project, the Minister must request the Domestic Offsets Integrity Committee to advise the Minister about whether such a project should, or should not, be specified in those regulations.
- (3) In deciding whether to recommend to the Governor-General that regulations should be made for the purposes of paragraph (1)(a) specifying a particular kind of project, the Minister must have regard to:
 - (a) whether carrying out such a project is not common practice in:
 - (i) the relevant industry or the relevant part of the relevant industry; or
 - (ii) the kind of environment in which such a project is to be carried out; and
 - (b) whether, apart from Part 2, carrying out such a project would not be common practice in:
 - (i) the relevant industry or the relevant part of the relevant industry; or
 - (ii) the kind of environment in which such a project is to be carried out; and
 - (c) any advice given by the Domestic Offsets Integrity Committee under subsection (2); and
 - (d) such other matters (if any) as the Minister considers relevant.

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

Part 3 Eligible offsets projects

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

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

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

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

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

Division 8—Applicable carbon sequestration right

43 Applicable carbon sequestration right

Torrens system land

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

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

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

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

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

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

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

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

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

Crown land that is not Torrens system land

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

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

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

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

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

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

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

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

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- (c) as a result of the area being Crown land:
 - (i) the Commonwealth; or
 - (ii) a statutory authority of the Commonwealth;has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon dioxide by trees on the area of land;

the exclusive right is the ***carbon sequestration right*** held by the Commonwealth or statutory authority, as the case may be, in relation to the land.

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

- (8) For the purposes of the application of this Act to a sequestration offsets project, if:

- (a) an area of land is a project area for the project; and
- (b) the area of land is Crown land in a State or Territory; and
- (c) the area of land is not Torrens system land; and
- (d) as a result of the area of land being Crown land:
 - (i) the State or Territory; or
 - (ii) a statutory authority of the State or Territory;has the exclusive legal right to obtain the benefit (whether present or future) of sequestration of carbon in the relevant carbon pool on the area of land;

the exclusive right is the ***applicable carbon sequestration right*** held by the State, Territory or statutory authority, as the case may be, in relation to the project area.

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

Native title land

- (9) For the purposes of the application of this Act to a sequestration offsets project, if:

- (a) an area of land is a project area for the project; and
- (b) the area of land is native title land; and
- (c) there is a registered native title body corporate for the area of land; and
- (d) as a result of holding the native title, the native title holder has the exclusive legal right to obtain the benefit (whether

present or future) of sequestration of carbon dioxide in the relevant carbon pool on the area of land;

then:

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

then:

- (e) subsections (1), (2), (3), (4), (5), (6), (7) and (8) do not apply in relation to the area of land; and
- (f) the exclusive right is the ***applicable carbon sequestration right*** held by the other person in relation to the project area.

Regulations

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

Part 3 Eligible offsets projects

Division 8 Applicable carbon sequestration right

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

Division 9—Eligible interest in an area of land

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

Scope

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

Eligible interest

- (2) For the purposes of this Act, if:
- (a) a person holds an estate in fee simple, or any other legal estate or interest, in the whole or a part of the area of land; and
 - (b) the estate or interest is registered under a Torrens system of registration;
- the estate or interest is an *eligible interest* held by the person in the area of land.
- (3) For the purposes of this Act, if:
- (a) under subsection (2), a person holds an eligible interest in the area of land; and
 - (b) another person:
 - (i) is a mortgagee of the eligible interest, where the mortgage is registered under a Torrens system of registration; or
 - (ii) a chargee of the eligible interest, where the charge is registered under a Torrens system of registration;
- the mortgage or charge is an *eligible interest* held by the other person in the area of land.
- (4) For the purposes of this Act, if the area of land is Crown land, the Crown lands Minister of the State or Territory holds an *eligible interest* in the area of land.

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- (5) The regulations may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the regulations holds an *eligible interest* in the area of land.
- (6) For the purposes of this Act, if:
- (a) the area of land is land rights land; and
 - (b) any of the following subparagraphs applies to the area of land:
 - (i) a lease is in force over the land, and the grant of the lease took place under a law of the Commonwealth that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders;
 - (ii) subparagraph (i) does not apply, and the land is held by the Commonwealth;
 - (iii) subparagraph (i) does not apply, and the land is held by a statutory authority of the Commonwealth;
- then:
- (c) if subparagraph (b)(i) applies—the Minister who administers the law mentioned in that subparagraph holds an *eligible interest* in the area of land; or
 - (d) if subparagraph (b)(ii) applies—the Minister who administers the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an *eligible interest* in the area of land; or
 - (e) if subparagraph (b)(iii) applies—the Minister who administers the Act that establishes the statutory authority holds an *eligible interest* in the area of land.
- (7) For the purposes of this Act, if:
- (a) the area of land is land rights land in a State or Territory; and
 - (b) the area of land is not covered by subsection (6); and
 - (c) the area of land is not freehold land rights land;
- the Crown lands Minister of the State or Territory holds an *eligible interest* in the area of land.

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

Scope

- (1) This section applies to an area of land in a State or Territory if the area of land:
- (a) is Crown land; and
 - (b) is not Torrens system land.

Eligible interest

- (2) For the purposes of this Act, if the area of land is neither:
- (a) exclusive possession native title land; nor
 - (b) land rights land;
- the Crown lands Minister of the State or Territory holds an ***eligible interest*** in the area of land.
- (3) For the purposes of this Act, if:
- (a) a person (other than the State or Territory) holds a legal estate or interest (the ***relevant estate or interest***) in the whole or a part of the area of land; and
 - (b) any of the following conditions are satisfied:
 - (i) the relevant estate or interest came into existence as a result of a grant by the Crown in any capacity;
 - (ii) the relevant estate or interest was derived from an estate or interest that came into existence as a result of a grant by the Crown in any capacity;
 - (iii) the relevant estate or interest was created by or under a law of the Commonwealth, a State or a Territory;
 - (iv) the relevant estate or interest was derived from an estate or interest that was created by or under a law of the Commonwealth, a State or a Territory;
- the relevant estate or interest is an ***eligible interest*** held by the person in the area of land.
- (4) For the purposes of this Act, if:
- (a) under subsection (3), a person holds an eligible interest in the area of land; and
-

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- (b) another person:
 - (i) is a mortgagee of the eligible interest; or
 - (ii) is a chargee of the eligible interest;the mortgage or charge is an *eligible interest* held by the other person in the area of land.
- (5) The regulations may provide that, for the purposes of this Act, a person specified in, or ascertained in accordance with, the regulations holds an *eligible interest* in the area of land.
- (6) For the purposes of this Act, if:
 - (a) the area of land is land rights land; and
 - (b) any of the following subparagraphs applies to the area of land:
 - (i) a lease is in force over the land, and the grant of the lease took place under a law of the Commonwealth that makes provision for the grant of such things only to, or for the benefit of, Aboriginal peoples or Torres Strait Islanders;
 - (ii) subparagraph (i) does not apply, and the land is held by the Commonwealth;
 - (iii) subparagraph (i) does not apply, and the land is held by a statutory authority of the Commonwealth;then:
 - (c) if subparagraph (b)(i) applies—the Minister who administers the law mentioned in that subparagraph holds an *eligible interest* in the area of land; or
 - (d) if subparagraph (b)(ii) applies—the Minister who administers the *Aboriginal Land Rights (Northern Territory) Act 1976* holds an *eligible interest* in the area of land; or
 - (e) if subparagraph (b)(iii) applies—the Minister who administers the Act that establishes the statutory authority holds an *eligible interest* in the area of land.
- (7) For the purposes of this Act, if:
 - (a) the area of land is land rights land in a State or Territory; and
 - (b) the area of land is not covered by subsection (6); and
 - (c) the area of land is not freehold land rights land;

the Crown lands Minister of the State or Territory holds an *eligible interest* in the area of land.

45A Eligible interest in an area of land—native title land

Scope

- (1) This section applies to an area of land if:
 - (a) the area of land is native title land; and
 - (b) there is a registered native title body corporate for the area of land.

Eligible interest

- (2) For the purposes of this Act, the registered native title body corporate holds an *eligible interest* in the area of land.

Division 10—Native title land

46 Registered native title bodies corporate—deemed project proponent

Exclusive possession native title land

- (1) For the purposes of the application of this Act to an offsets project, if the following conditions are satisfied in relation to the project area, or each of the project areas, for the offsets project:
- (a) the project area is exclusive possession native title land;
 - (b) there is a registered native title body corporate for the project area;
 - (c) no person (other than a body politic, the common law holders or the registered native title body corporate) has the legal right to carry out the project;
 - (d) no person (other than a body politic, the common law holders or the registered native title body corporate) holds the applicable carbon sequestration right in relation to the project area;

then:

- (e) the registered native title body corporate for the project area is taken to be the project proponent for the offsets project; and
- (f) no other person is taken to be the project proponent for the project; and
- (g) paragraphs 27(4)(h) and (i) do not apply to the offsets project.

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

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

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

- (a) the project area is native title land;
 - (b) there is a registered native title body corporate for the project area;
 - (c) the native title holder has the legal right to carry out the project;
 - (d) the native title holder holds the applicable carbon sequestration right in relation to the project area;
 - (e) subsection (1) does not apply to the project;
- then:
- (f) the registered native title body corporate for the project area is taken to be the project proponent for the offsets project; and
 - (g) no other person is taken to be the project proponent for the project; and
 - (h) subparagraphs 27(4)(h)(vii) and (i)(v) have effect, in relation to the project, as if a reference in those subparagraphs to the applicant were a reference to the native title holder.

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

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

Scope

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

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Notification

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

48 Designation of special native title account

Scope

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

Request for special native title account

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

Designation of special native title account

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

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

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

Application for issue of Australian carbon credit units

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

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

Issue of Australian carbon credit units

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

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

50 Units held in special native title account

Scope

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

Units held in account

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

51 Regulations about consulting common law holders etc.

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

Division 11—Freehold land rights land

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

Scope

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

Notification

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

Division 12—Types of projects

53 Emissions avoidance offsets projects

- (1) For the purposes of this Act, a project is an *emissions avoidance offsets project* if it is:
 - (a) an agricultural emissions avoidance project; or
 - (b) a landfill legacy emissions avoidance project; or
 - (c) an introduced animal emissions avoidance project; or
 - (d) a project of a kind specified in the regulations.
- (2) Paragraph (1)(d) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.
- (3) For the purposes of this Act, a project is not an *emissions avoidance offsets project* if the project is a sequestration offsets project.

54 Sequestration offsets projects

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

- (a) to remove carbon dioxide from the atmosphere by sequestering carbon in one or more of the following:
 - (i) living biomass;
 - (ii) dead organic matter;
 - (iii) soil; or
- (b) to remove carbon dioxide from the atmosphere by sequestering carbon in, and to avoid emissions of greenhouse gases from, one or more of the following:
 - (i) living biomass;
 - (ii) dead organic matter;
 - (iii) soil.

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

Kyoto offsets projects

- (1) For the purposes of this Act, an offsets project is a ***Kyoto offsets project*** if it is:
 - (a) an agricultural emissions avoidance project; or
 - (b) a landfill legacy emissions avoidance project; or
 - (c) an offsets project of a kind specified in the regulations.
 - (2) Subsection (1) has effect subject to subsection (3).
 - (3) For the purposes of this Act, an offsets project is not a ***Kyoto offsets project*** unless:
 - (a) if the project is a sequestration offsets project:
 - (i) to the extent to which the project is a project to remove carbon dioxide from the atmosphere—the removal can be used to meet Australia’s climate change targets under the Kyoto Protocol or an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol; and
 - (ii) to the extent (if any) to which the project is a project to avoid emissions of greenhouse gases—the avoidance can be used to meet Australia’s climate change targets under the Kyoto Protocol or an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol; or
 - (b) if the project is an emissions avoidance offsets project to avoid emissions of one or more greenhouse gases—the avoidance can be used to meet Australia’s climate change targets under:
 - (i) the Kyoto Protocol; or
 - (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol.
 - (4) Paragraph (1)(c) does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.
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Non-Kyoto offsets projects

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

Dissection of project

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

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

56 Excluded offsets projects

- (1) For the purposes of this Act, an offsets project is an ***excluded offsets project*** if it is a project of a kind specified in the regulations.
- (2) In deciding whether to recommend to the Governor-General that regulations should be made for the purposes of subsection (1) specifying a particular kind of project, the Minister must have regard to whether there is a material risk that that kind of project will have a material adverse impact on one or more of the following:
- (a) the availability of water;
 - (b) the conservation of biodiversity;
 - (c) employment;
 - (d) the local community;
 - (e) land access for agricultural production;

in, or in the vicinity of, the project area, or any of the project areas,
for that kind of project.

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

Division 13—Restructure of eligible offsets projects

57 Restructure of eligible offsets projects

- (1) For the purposes of this section, if:
- (a) as the result of the variation or revocation of a section 27 declaration, an area of land (the *relevant area*) ceases to be, or ceases to be part of, the project area, or any of the project areas, for an eligible offsets project that:
 - (i) is a sequestration offsets project; and
 - (ii) is not a native forest protection project; and
 - (b) as a result of the making or variation of another section 27 declaration, the relevant area becomes, or becomes part of, the project area, or any of the project areas, for another eligible offsets project that:
 - (i) is a sequestration offsets project; and
 - (ii) is not a native forest protection project;
- then:
- (c) the project mentioned in paragraph (a) is the *transferor offsets project*; and
 - (d) the project mentioned in paragraph (b) is the *transferee offsets project*.

Regulations

- (2) The regulations may make provision for or in relation to the adjustment of any or all of the following:
- (a) the calculation of a unit entitlement in relation to the transferee offsets project using the formula in subsection 16(2);
 - (b) the calculation of a unit entitlement in relation to the transferor offsets project using the formula in subsection 16(2);
 - (c) the calculation of the net total number of Australian carbon credit units issued in relation to the transferee offsets project in accordance with Part 2;

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

Determinations

- (3) Regulations made for the purposes of subsection (2) may empower the Administrator to determine that, whenever it is necessary to calculate a unit entitlement in relation to the transferor offsets project using the formula in subsection 16(2), that subsection has effect, in relation to the transferor offsets project, as if the net abatement number were decreased by the number specified in the determination.
- (4) Regulations made for the purposes of subsection (2) may empower the Administrator to determine that, whenever it is necessary to calculate a unit entitlement in relation to the transferee offsets project using the formula in subsection 16(2), that subsection has effect, in relation to the transferee offsets project, as if the net abatement number were increased by the number specified in the determination.
- (5) Regulations made for the purposes of subsection (2) may empower the Administrator to determine that, whenever it is necessary to work out the net total number of Australian carbon credit units issued in relation to the transferor offsets project, this Act has effect, in relation to the transferor offsets project, as if the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2 were decreased by the number specified in the determination.
- (6) Regulations made for the purposes of subsection (2) may empower the Administrator to determine that, whenever it is necessary to work out the net total number of Australian carbon credit units issued in relation to the transferee offsets project, this Act has effect, in relation to the transferee offsets project, as if the net total number of Australian carbon credit units issued in relation to the

Part 3 Eligible offsets projects

Division 13 Restructure of eligible offsets projects

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

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

Determination is not a legislative instrument

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

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

Scope

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

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

Restriction

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

Part 4—Recognised offsets entities

59 Simplified outline

The following is a simplified outline of this Part:

- The Administrator may recognise a person as an offsets entity.

60 Application for recognition as an offsets entity

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

61 Form of application

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

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62 Further information

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

63 Withdrawal of application

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

64 Recognition as an offsets entity

Scope

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

Recognition

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

Criteria for recognition

- (3) The Administrator must not recognise the applicant as an offsets entity unless:
- (a) the Administrator is satisfied that the applicant is a fit and proper person, having regard to the following:
 - (i) whether the applicant has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to dishonest conduct;
 - (ii) whether the applicant has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to the conduct of a business;
 - (iii) whether the applicant has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
 - (iv) whether an order has been made against the applicant under section 76 of the *Competition and Consumer Act 2010*;
 - (v) whether an order has been made against the applicant under section 224 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, a State or a Territory;
 - (vi) whether the applicant has breached this Act or the associated provisions;
 - (vii) whether the applicant has breached the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act;
 - (viii) whether the applicant has breached the *National Greenhouse and Energy Reporting Act 2007* or regulations under that Act;
 - (ix) if the applicant is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to dishonest conduct;

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- (x) if the applicant is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to the conduct of a business;
 - (xi) if the applicant is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
 - (xii) if the applicant is a body corporate—whether an order has been made against an executive officer of the body corporate under section 76 of the *Competition and Consumer Act 2010*;
 - (xiii) if the applicant is a body corporate—whether an order has been made against an executive officer of the body corporate under section 224 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, a State or a Territory;
 - (xiv) if the applicant is a body corporate—whether an executive officer of the body corporate has breached this Act or the associated provisions;
 - (xv) if the applicant is a body corporate—whether an executive officer of the body corporate has breached the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act;
 - (xvi) if the applicant is a body corporate—whether an executive officer of the body corporate has breached the *National Greenhouse and Energy Reporting Act 2007* or regulations under that Act;
 - (xvii) such other matters (if any) as the Administrator considers relevant; and
- (b) if the applicant is an individual—the Administrator is satisfied that the applicant is not an insolvent under administration; and
 - (c) if the applicant is a body corporate—the Administrator is satisfied that the applicant is not an externally-administered body corporate; and

- (d) if the regulations specify one or more other eligibility requirements—the Administrator is satisfied that those requirements are met.
- (4) Subparagraphs (3)(a)(i) to (xvi) do not limit subparagraph (3)(a)(xvii).

Timing

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

Refusal

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

Spent convictions

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

65 Cancellation of recognition*Cancellation*

- (1) The Administrator may cancel the recognition of a person as an offsets entity if:
 - (a) the Administrator is satisfied that the person is not a fit and proper person, having regard to the following:
 - (i) whether the person has been convicted of an offence against a law of the Commonwealth, a State or a

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- Territory, where the offence relates to dishonest conduct;
- (ii) whether the person has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to the conduct of a business;
 - (iii) whether the person has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
 - (iv) whether an order has been made against the person under section 76 of the *Competition and Consumer Act 2010*;
 - (v) whether an order has been made against the person under section 224 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, a State or a Territory;
 - (vi) whether the person has breached this Act or the associated provisions;
 - (vii) whether the person has breached the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act;
 - (viii) whether the person has breached the *National Greenhouse and Energy Reporting Act 2007* or regulations under that Act;
 - (ix) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to dishonest conduct;
 - (x) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to the conduct of a business;
 - (xi) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
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- (xii) if the person is a body corporate—whether an order has been made against an executive officer of the body corporate under section 76 of the *Competition and Consumer Act 2010*;
 - (xiii) if the person is a body corporate—whether an order has been made against an executive officer of the body corporate under section 224 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, a State or a Territory;
 - (xiv) if the person is a body corporate—whether an executive officer of the body corporate has breached this Act or the associated provisions;
 - (xv) if the person is a body corporate—whether an executive officer of the body corporate has breached the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act;
 - (xvi) if the person is a body corporate—whether an executive officer of the body corporate has breached the *National Greenhouse and Energy Reporting Act 2007* or regulations under that Act;
 - (xvii) such other matters (if any) as the Administrator considers relevant; or
- (b) if the person is an individual—the Administrator is satisfied that the person is an insolvent under administration; or
 - (c) if the person is a body corporate—the Administrator is satisfied that the person is an externally-administered body corporate; or
 - (d) if the regulations specify one or more other grounds for cancellation—the Administrator is satisfied that at least one of those grounds is applicable to the person.
- (2) Subparagraphs (1)(a)(i) to (xvi) do not limit subparagraph (1)(a)(xvii).

Spent convictions

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

66 Surrender of recognition

Scope

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

Surrender

- (2) The person may, by written notice given to the Administrator, surrender the person's recognition.
- (3) The surrender takes effect on the day the notice is received by the Administrator or, if a later day is specified in the notice, on that later day.

67 Recognition is not transferable

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

Part 5—Crediting periods

Division 1—Introduction

68 Simplified outline

The following is a simplified outline of this Part:

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

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

Division 2—First crediting period

69 First crediting period

- (1) For the purposes of this Act, the first *crediting period* for an eligible offsets project is:
 - (a) if the project is a native forest protection project:
 - (i) the period of 20 years; or
 - (ii) if another period is specified in the regulations—that other period;
that began when the declaration of the project under section 27 took effect; or
 - (b) if the project is not a native forest protection project:
 - (i) the period of 7 years; or
 - (ii) if another period is specified in the regulations—that other period;
that began when the declaration of the project under section 27 took effect.
- (2) Regulations made for the purposes of subparagraph (1)(a)(ii) or (b)(ii) may specify different periods for different kinds of projects. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Division 3—Subsequent crediting period

70 Application for subsequent crediting period

Scope

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

Application period

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

Application

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

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71 Form of application

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

72 Further information

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

73 Withdrawal of application

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

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

74 Determination of subsequent crediting period

Scope

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

Determination

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

Notification of determination

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

Refusal

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

Part 5 Crediting periods

Division 3 Subsequent crediting period

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Determination is not a legislative instrument

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

Part 6—Reporting and notification requirements

Division 1—Introduction

75 Simplified outline

The following is a simplified outline of this Part:

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

Division 2—Reporting requirements

76 Offsets reports

Report for first reporting period

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

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

Reports for subsequent reporting periods

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

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

Note 2: See also section 77.

Offsets report

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

Offsets report requirements

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

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

Ancillary contraventions

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

Civil penalty provisions

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

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

77 Declaration that offsets report requirement does not apply

Regulations

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

- (a) applications for declarations under those regulations;
 - (b) the approval by the Administrator of a form for such an application;
 - (c) information that must accompany such an application;
 - (d) documents that must accompany such an application;
 - (e) verification by statutory declaration of statements in such an application;
 - (f) the fee (if any) that must accompany such an application;
 - (g) the withdrawal of such an application;
 - (h) empowering the Administrator:
 - (i) to require an applicant to give the Administrator further information in connection with such an application; and
 - (ii) if the applicant breaches the requirement—to refuse to consider the application, or to refuse to take any action, or any further action, in relation to the application.
- (4) Subsection (3) does not limit subsection (1).
- (5) A fee mentioned in paragraph (3)(f) must not be such as to amount to taxation.

When a declaration takes effect

- (6) A declaration under regulations made for the purposes of subsection (1) takes effect:
- (a) when it is made; or
 - (b) if a later day is specified in the declaration—on that later day.

Division 3—Notification requirements

Subdivision A—Project proponents

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

Scope

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

Notification

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

Ancillary contraventions

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

Civil penalty provisions

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

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

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

Scope

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

Notification

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

Ancillary contraventions

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

Civil penalty provisions

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

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

80 Notification requirement—methodology determinations

Scope

- (1) This section applies if:
 - (a) there is an eligible offsets project; and
 - (b) under the applicable methodology determination, the project proponent for the project is subject to a requirement to notify
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the Administrator of one or more matters relating to the project.

Notification

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

Ancillary contraventions

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

Civil penalty provisions

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

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

81 Notification requirement—natural disturbances

Scope

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

Notification

- (2) The project proponent for the project must:
- (a) notify the Administrator, in writing, of:

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

Ancillary contraventions

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

Civil penalty provisions

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

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

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

Scope

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

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Notification

- (2) The project proponent for the project must:
- (a) notify the Administrator, in writing, of conduct engaged in by a person (other than the project proponent), where the conduct:
 - (i) is not within the reasonable control of the project proponent; and
 - (ii) causes a reversal of the removal; and
 - (b) do so within 60 days after the project proponent becomes aware that the conduct has been engaged in.
- (3) The project proponent for the project must:
- (a) notify the Administrator, in writing, of conduct engaged in by a person (other than the project proponent), where the conduct:
 - (i) is not within the reasonable control of the project proponent; and
 - (ii) is likely to cause a reversal of the removal; and
 - (b) do so within 60 days after the project proponent becomes aware that the conduct has been engaged in.
- (4) Subsections (2) and (3) do not apply to a reversal unless the reversal is, under the regulations, taken to be a significant reversal.

Ancillary contraventions

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

Civil penalty provisions

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

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

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

Scope

- (1) This section applies if:
- (a) there is an eligible offsets project; and
 - (b) the project area, or any of the project areas, for the project is covered by a regional natural resource management plan; and
 - (c) as a result of a change to the project, the project becomes inconsistent with the plan.

Notification

- (2) The project proponent for the project must, within 90 days after the change, notify the Administrator, in writing, of:
- (a) the change; and
 - (b) the inconsistency.
- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (2); or
 - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (2); or
 - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (2); or
 - (d) conspire with others to effect a contravention of subsection (2).

Civil penalty provisions

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

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

Subdivision B—Recognised offsets entities

84 Notification requirement—recognised offsets entities

Scope

- (1) This section applies to a person if:
 - (a) the person is a recognised offsets entity; and
 - (b) any of the following events happen:
 - (i) the person is convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to dishonest conduct;
 - (ii) the person is convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to the conduct of a business;
 - (iii) the person is convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
 - (iv) an order is made against the person under section 76 of the *Competition and Consumer Act 2010*;
 - (v) an order is made against the person under section 224 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, a State or a Territory;
 - (vi) if the person is a body corporate—an executive officer of the body corporate is convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to dishonest conduct;
 - (vii) if the person is a body corporate—an executive officer of the body corporate is convicted of an offence against a law of the Commonwealth, a State or a Territory, where the offence relates to the conduct of a business;
 - (viii) if the person is a body corporate—an executive officer of the body corporate is convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
 - (ix) if the person is a body corporate—an order is made against an executive officer of the body corporate under section 76 of the *Competition and Consumer Act 2010*;

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

Notification

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

Ancillary contraventions

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

Civil penalty provisions

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

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

Subdivision C—General

85 Regulations may impose notification requirements

Scope

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

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- (b) a recognised offsets entity.

Regulations

- (2) The regulations may make provision requiring the person to notify the Administrator of a matter.
- (3) Regulations made for the purposes of subsection (2) may make different provision with respect to different project proponents or different recognised offsets entities. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) A matter specified in regulations made for the purposes of subsection (2) must be relevant to the operation of this Act.

Requirement

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

Ancillary contraventions

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

Civil penalty provisions

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

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

Part 7—Requirements to relinquish Australian carbon credit units

Division 1—Introduction

86 Simplified outline

The following is a simplified outline of this Part:

- Australian carbon credit units may be required to be relinquished if:
 - (a) the issue of the units is attributable to the giving of false or misleading information; or
 - (b) the units were issued in relation to a sequestration offsets project, and the declaration of the sequestration offsets project as an eligible offsets project has been revoked; or
 - (c) the units were issued in relation to a sequestration offsets project, and there has been a complete or partial reversal of sequestration.

87 Maximum potential relinquishment period

- (1) For the purposes of this Act, the *maximum potential relinquishment period* for an eligible offsets project is:
 - (a) 100 years; or
 - (b) if, at the time when the declaration of the project as an eligible offsets project was made, a greater number of years was specified in the regulations—that greater number of years.
- (2) However, if:

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- (a) the regulations specify a number of years that is less than 100 years; and
- (b) those regulations are made after the time when the declaration of a project as an eligible offsets project was made;

then, despite subsection (1), that lesser number of years is the *maximum potential relinquishment period* for the eligible offsets project.

Division 2—General relinquishment requirements

88 Requirement to relinquish—false or misleading information

Scope

- (1) This section applies if:
 - (a) a number of Australian carbon credit units have been issued to a person in relation to an eligible offsets project; and
 - (b) information was given by the person to the Administrator in connection with the project; and
 - (c) the information was:
 - (i) contained in an application under this Act or the regulations; or
 - (ii) given in connection with an application under this Act or the regulations; or
 - (iii) contained in an offsets report; or
 - (iv) contained in a notification under Part 6; and
 - (d) the information was false or misleading in a material particular; and
 - (e) the issue of any or all of the units was directly or indirectly attributable to the false or misleading information.

Relinquishment

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

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

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

- (3) A number specified under subsection (2) must not exceed the number of Kyoto Australian carbon credit units the issue of which

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was directly or indirectly attributable to the false or misleading information.

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

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

Division 3—Relinquishment requirements for sequestration offsets projects

89 Requirement to relinquish—revocation of declaration of eligible offsets project

Scope

- (1) This section applies if:
- (a) an eligible offsets project is a sequestration offsets project;
and
 - (b) a number of Australian carbon credit units have been issued
in relation to the project; and
 - (c) the declaration of the project as an eligible offsets project is
revoked under regulations made for the purposes of any of
the following provisions:
 - (i) subsection 35(1);
 - (ii) subsection 36(1);
 - (iii) subsection 37(1);
 - (iv) subsection 38(1);
 - (v) subsection 139(1); and
 - (d) if the declaration has never been varied so as to add one or
more project areas—the period that has passed since the first
occasion on which an Australian carbon credit unit was
issued in relation to the project in accordance with Part 2 is
shorter than the maximum potential relinquishment period for
the project; and
 - (e) if the declaration has been varied so as to add one or more
project areas—the period that has passed since the last
occasion on which the declaration was so varied is shorter
than the maximum potential relinquishment period for the
project.

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Relinquishment

- (2) The Administrator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of:
- (a) if the project is an eligible Kyoto project—Kyoto Australian carbon credit units; or
 - (b) if the project is an eligible non-Kyoto project—non-Kyoto Australian carbon credit units.

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

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

- (3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) The project proponent must comply with the requirement within 90 days after the notice was given.

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

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

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

Scope

- (1) This section applies if:
- (a) an eligible offsets project is a sequestration offsets project to remove carbon dioxide from the atmosphere; and
 - (b) a number of Australian carbon credit units have been issued in relation to the project; and
 - (c) there has been a reversal of the removal; and
 - (d) the reversal is, under the regulations, taken to be a significant reversal; and
 - (e) the reversal is not attributable to:
 - (i) natural disturbance; or

- (ii) reasonable actions taken to reduce the risk of bushfire;
or
- (iii) conduct engaged in by a person (other than the project proponent for the project), where the conduct is not within the reasonable control of the project proponent;
and
- (f) if the relevant section 27 declaration has never been varied so as to add one or more project areas—the period that has passed since the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2 is shorter than the maximum potential relinquishment period for the project; and
- (g) if the relevant section 27 declaration has been varied so as to add one or more project areas—the period that has passed since the last occasion on which the declaration was so varied is shorter than the maximum potential relinquishment period for the project.

Relinquishment

- (2) The Administrator may, by written notice given to the project proponent for the project, require the project proponent to relinquish a specified number of:
 - (a) if the project is an eligible Kyoto project—Kyoto Australian carbon credit units; or
 - (b) if the project is an eligible non-Kyoto project—non-Kyoto Australian carbon credit units.

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

Note 2: See also section 178 (transfer of certain units instead of relinquishment of non-Kyoto Australian carbon credit units).
- (3) The specified number must not exceed the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) The project proponent must comply with the requirement within 90 days after the notice was given.

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

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

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

Scope

- (1) This section applies if:
- (a) an eligible offsets project is a sequestration offsets project to remove carbon dioxide from the atmosphere; and
 - (b) a number of Australian carbon credit units have been issued in relation to the project; and
 - (c) there has been a reversal of the removal; and
 - (d) the reversal is, under the regulations, taken to be a significant reversal; and
 - (e) the reversal is attributable to:
 - (i) natural disturbance; or
 - (ii) conduct engaged in by a person (other than the project proponent for the project), where the conduct is not within the reasonable control of the project proponent; and
 - (f) the Administrator is not satisfied that the project proponent has, within a reasonable period, taken reasonable steps to mitigate the effect of the natural disturbance or conduct, as the case may be, on the project; and
 - (g) if the relevant section 27 declaration has never been varied so as to add one or more project areas—the period that has passed since the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2 is shorter than the maximum potential relinquishment period for the project; and
 - (h) if the relevant section 27 declaration has been varied so as to add one or more project areas—the period that has passed since the last occasion on which the declaration was so varied is shorter than the maximum potential relinquishment period for the project.

Relinquishment

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

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

92 Request for determination

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

93 Form of request

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

94 Further information

- (1) The Administrator may, by written notice given to a person who has made a request under section 92, require the person to give the Administrator, within the period specified in the notice, further information in connection with the request.
- (2) If the person breaches the requirement, the Administrator may, by written notice given to the person:
 - (a) refuse to consider:
 - (i) the request; and

- (ii) the application under section 22; or
- (b) refuse to take any action, or any further action, in relation to:
 - (i) the request; and
 - (ii) the application under section 22.

95 Determination

Scope

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

Determination

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

Refusal

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

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Division 4 Transition of offsets projects from prescribed non-CFI offsets schemes

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Determination is not legislative instrument

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

Part 8—Carbon maintenance obligation

Division 1—Introduction

96 Simplified outline

The following is a simplified outline of this Part:

- A carbon maintenance obligation may be imposed in relation to an area or areas of land if a relinquishment requirement has not been complied with.

Division 2—Carbon maintenance obligation

97 Carbon maintenance obligation

Scope

- (1) This section applies to one or more areas of land if:
 - (a) the following conditions are satisfied:
 - (i) a sequestration offsets project is or was an eligible offsets project;
 - (ii) a notice was given under section 88, 89, 90 or 91 in relation to the project;
 - (iii) the area was, or the areas were, identified in the relevant section 27 declaration as the project area or project areas for the eligible offsets project;
 - (iv) the notice required a person to relinquish a particular number of Australian carbon credit units;
 - (v) the person did not comply with the requirement within 90 days after the notice was given; or
 - (b) the following conditions are satisfied:
 - (i) a sequestration offsets project is or was an eligible offsets project;
 - (ii) a notice was given under section 88, 89, 90 or 91 in relation to the project;
 - (iii) the area was, or the areas were, identified in the relevant section 27 declaration as the project area or project areas for the eligible offsets project;
 - (iv) the notice required a person to relinquish a particular number of Australian carbon credit units;
 - (v) the Administrator is satisfied that it is likely that the person will not comply with the requirement within 90 days after the notice was given; or
 - (c) the Administrator is satisfied that:
 - (i) a sequestration offsets project is or was an eligible offsets project; and

- (ii) it is likely that a notice will be given under section 88, 89, 90 or 91 in relation to the project; and
- (iii) the area is, or the areas are, identified in the relevant section 27 declaration as the project area or project areas for the eligible offsets project; and
- (iv) the notice is likely to require a person to relinquish a particular number of Australian carbon credit units; and
- (v) it is likely that the person will not comply with the requirement within 90 days after the notice is given.

Declaration

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

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

- (3) If the area or areas of land are subject to a carbon maintenance obligation, the carbon maintenance obligation ***relates*** to the project mentioned in whichever of subparagraph (1)(a)(i), (1)(b)(i) or (1)(c)(i) applies.
- (4) An activity may be specified under paragraph (2)(b) by reference to:
 - (a) the area or areas of land on which the activity may be carried out; or
 - (b) the manner in which the activity may be carried out; or
 - (c) the time or times at which the activity may be carried out; or
 - (d) the period or periods during which the activity may be carried out; or
 - (e) the person or persons who may carry out the activity.
- (5) Subsection (4) does not limit the ways in which an activity may be specified under paragraph (2)(b).

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- (6) If the Administrator makes a declaration under subsection (2), the Administrator must take all reasonable steps to ensure that a copy of the declaration is given to:
- (a) the project proponent for the project; and
 - (b) each person who holds an eligible interest in the area, or any of the areas, of land; and
 - (c) a person specified in the regulations; and
 - (d) the relevant land registration official.
- (7) A failure to comply with subsection (6) does not affect the validity of a declaration under subsection (2).

Benchmark sequestration level

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

Obligations

- (9) If the area or areas of land are subject to a carbon maintenance obligation, a person must not engage in conduct that:
- (a) results, or is likely to result, in a reduction below the benchmark sequestration level of the sequestration of carbon in the relevant carbon pool on the area or areas; and
 - (b) is not a permitted carbon activity.
- (10) If:
- (a) the area or areas of land are subject to a carbon maintenance obligation; and
 - (b) there has been a reduction below the benchmark sequestration level of the sequestration of carbon in the relevant carbon pool on the area or areas;
- the owner or occupier of the land must take all reasonable steps to ensure that the number of tonnes of carbon sequestered in the relevant carbon pool on the area or areas is not less than the benchmark storage level.

Ancillary contraventions

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

Civil penalty provisions

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

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

Duration of declaration

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

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when the penalty payable under section 179 in respect of the non-compliance with the requirement (including any late payment penalty payable under section 180 in relation to the section 179 penalty) is paid in full;

- (c) if the relevant section 27 declaration has never been varied so as to add one or more project areas—the end of the period that:
 - (i) begins on the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2; and
 - (ii) is of the same duration as the maximum potential relinquishment period for the project;
- (d) if the relevant section 27 declaration has been varied so as to add one or more project areas—the end of the period that:
 - (i) begins on the last occasion on which the declaration was so varied; and
 - (ii) is of the same duration as the maximum potential relinquishment period for the project.

Declaration is not a legislative instrument

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

98 Variation or revocation of declaration of carbon maintenance obligation

Scope

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

Variation or revocation

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

Application

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

Notification of variation or revocation

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

Refusal

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

Variation or revocation is not a legislative instrument

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

Section 99

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

Scope

- (1) This section applies if:
- (a) an area or areas of land are subject to a carbon maintenance obligation; and
 - (b) in the case of a single area—the area is not a project area for an eligible offsets project; and
 - (c) in the case of 2 or more areas—none of the areas is a project area for an eligible offsets project; and
 - (d) a person applies to the Administrator for the revocation of the relevant subsection 97(2) declaration; and
 - (e) if the project is an eligible Kyoto project:
 - (i) before the application was made, the applicant or another person voluntarily relinquished a number of Kyoto Australian carbon credit units in order to satisfy a condition for revocation of the declaration; and
 - (ii) the number of relinquished units equals the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2; and
 - (f) if the project is an eligible non-Kyoto project:
 - (i) before the application was made, the applicant or another person voluntarily relinquished a number of non-Kyoto Australian carbon credit units in order to satisfy a condition for revocation of the declaration; and
 - (ii) the number of relinquished units equals the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.

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

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

Revocation

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

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

Notification of revocation

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

Refusal

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

Revocation is not a legislative instrument

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

Division 3—Injunctions

100 Injunctions

Performance injunctions

- (1) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of subsection 97(9) or (10);
- the Federal Court may, on the application of the Administrator, grant an injunction requiring the person to do that act or thing.

Restraining injunctions

- (2) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of subsection 97(9) or (10), the Federal Court may, on the application of the Administrator, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

101 Interim injunctions

Grant of interim injunction

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

No undertakings as to damages

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

102 Discharge etc. of injunctions

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

103 Certain limits on granting injunctions not to apply

Performance injunctions

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

Restraining injunctions

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

104 Other powers of the Federal Court unaffected

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

Part 9—Methodology determinations

Division 1—Introduction

105 Simplified outline

The following is a simplified outline of this Part:

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

Division 2—Methodology determinations

Subdivision A—Making of methodology determinations

106 Methodology determinations

- (1) The Minister may, by legislative instrument, make a determination that:
 - (a) is expressed to apply to a specified kind of offsets project; and
 - (b) sets out requirements that must be met for such a project to be an eligible offsets project; and
 - (c) provides that, if such a project is an eligible offsets project other than a native forest protection project, the carbon dioxide equivalent net abatement amount for the project in relation to a reporting period for the project is taken, for the purposes of this Act, to be equal to the amount ascertained using a method specified in the determination; and
 - (d) provides that, if such a project is a native forest protection project, the carbon dioxide equivalent net sequestration amount for a crediting period for the project is taken, for the purposes of this Act, to be equal to the amount ascertained using a method specified in the determination.
- Note: For declarations of eligible offsets projects, see section 27.
- (2) A determination under subsection (1) is to be known as a *methodology determination*.
 - (3) A methodology determination that applies to a particular kind of offsets project may provide that, if such a project is an eligible offsets project, the project proponent for the project is subject to any or all of the following requirements:
 - (a) specified requirements to include specified information relating to the project in each offsets report about the project;
 - (b) specified requirements to notify one or more matters relating to the project to the Administrator;
 - (c) specified record-keeping requirements relating to the project;

Section 106

(d) specified requirements to monitor the project.

(4) The Minister must not make a methodology determination unless:

(a) the determination gives effect to a particular proposal for a methodology determination; and

(b) the Domestic Offsets Integrity Committee has:

(i) endorsed the proposal under section 112; and

(ii) advised the Minister of the endorsement under section 113; and

(c) the determination complies with the offsets integrity standards; and

(d) the determination does not specify a kind of offsets project by reference to a State or a part of a State; and

(e) the determination complies with such requirements (if any) as are specified in the regulations; and

(f) the method specified in the determination in accordance with paragraph (1)(c) or (d) of this section includes a calculation of a baseline for the project; and

(g) in a case where:

(i) a method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007* is a method by which the amounts of the emissions of greenhouse gases from a particular source are to be measured for the purposes of that Act; and

(ii) the method specified in the methodology determination in accordance with paragraph (1)(c) or (d) of this section involves the measurement of emissions of greenhouse gases from that source;

the methodology determination provides that the emissions are to be measured, under the method specified in the methodology determination in accordance with paragraph (1)(c) or (d) of this section, in the same way as they are measured under the method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*.

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

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

- (5) If:
- (a) an applicant applies under section 108 to the Domestic Offsets Integrity Committee for the endorsement of a proposal for a methodology determination; and
 - (b) the Domestic Offsets Integrity Committee:
 - (i) endorses the proposal under section 112; and
 - (ii) advises the Minister of the endorsement under section 113; and
 - (c) the Minister decides not to make a methodology determination to give effect to the proposal;
- the Minister must, as soon as practicable after making the decision, give the applicant a notice that sets out:
- (d) the decision; and
 - (e) the reasons for the decision.
- (6) Subsection (4) does not, by implication, prevent the Minister from:
- (a) asking the Domestic Offsets Integrity Committee to give the Minister additional advice about a matter arising under this section; or
 - (b) asking another body or person to give the Minister advice about a matter arising under this section.
- (7) Paragraph (1)(a) of this section does not, by implication, affect the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.
- (8) A methodology determination 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.
- (9) Subsection (8) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (10) If a methodology determination makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Domestic Offsets Integrity Committee must ensure that the text of

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the matter applied, adopted or incorporated is published on its website.

- (11) Subsection (10) does not apply if the publication would infringe copyright.
- (12) If:
- (a) the Domestic Offsets Integrity Committee:
 - (i) endorses a particular proposal for a methodology determination under section 112; and
 - (ii) advises the Minister of the endorsement under section 113; and
 - (b) the Minister decides:
 - (i) to make a methodology determination to give effect to the proposal; or
 - (ii) not to make a methodology determination to give effect to the proposal;

the Minister must, as soon as practicable after making the decision, cause a copy of the Domestic Offset Integrity Committee's advice under section 113 to be published on the Department's website.

107 Baseline

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

108 Application for endorsement of proposal for methodology determination

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

109 Form of application

- (1) An application under section 108 must:
-

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

110 Further information

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

111 Withdrawal of application

- (1) An applicant may withdraw the application at any time before the Domestic Offsets Integrity Committee makes a decision on the application.
- (2) This Act does not prevent the applicant from making a fresh application.
- (3) If:
- (a) the applicant withdraws the application; and

Section 112

(b) the applicant has paid a fee in relation to the application; the Domestic Offsets Integrity Committee must, on behalf of the Commonwealth, refund the application fee.

112 Endorsement of proposal for methodology determination

Scope

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

Endorsement

- (2) After considering the application, the Domestic Offsets Integrity Committee must, in writing, either:
- (a) endorse the proposal; or
 - (b) refuse to endorse the proposal.
- (3) The Domestic Offsets Integrity Committee must not endorse the proposal unless the Committee is satisfied that, if the Minister were to make a methodology determination to give effect to the proposal:
- (a) the determination would comply with the offsets integrity standards; and
 - (b) the determination would not specify a kind of offsets project by reference to a State or a part of a State; and
 - (c) the determination would comply with such requirements (if any) as are specified in regulations made for the purposes of paragraph 106(4)(e); and
 - (d) the method specified in the determination in accordance with paragraph 106(1)(c) or (d) would include a calculation of a baseline for the project;
 - (g) in a case where:
 - (i) a method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007* is a method by which the amounts of the emissions of greenhouse gases from a particular source are to be measured for the purposes of that Act; and

- (ii) the method specified in the methodology determination in accordance with paragraph 106(1)(c) or (d) would involve the measurement of emissions of greenhouse gases from that source;

the methodology determination would provide that the emissions are to be measured, under the method specified in the methodology determination in accordance with paragraph 106(1)(c) or (d), in the same way as they are measured under the method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*.

Note: For *baseline*, see section 107.

(4) If:

(a) a Domestic Offsets Integrity Committee member:

- (i) is an SES employee in the Department; or
- (ii) holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department; and

(b) the member advises the Committee that, if the Minister were to make a methodology determination to give effect to the proposal, the determination would not comply with the offsets integrity standard set out in paragraph 133(1)(c);

then, for the purposes of paragraph (3)(a) of this section, the Domestic Offsets Integrity Committee is to assume that the determination would not comply with that offsets integrity standard.

Note: Paragraph 133(1)(c) deals with consistency with the National Inventory Report.

Consultation and publication

(5) The Domestic Offsets Integrity Committee must not endorse the proposal unless the Committee has first:

(a) published on the Department's website:

- (i) the proposal; and
- (ii) a notice inviting the public to make a submission to the Committee on the proposal by a specified time limit; and

Section 112

- (b) considered any submissions that were received within that time limit.
- (6) The time limit must not be shorter than 40 days.
- (7) If the Domestic Offsets Integrity Committee publishes the proposal on the Department's website under subsection (5), the Committee may also publish on the Department's website information given by the applicant to the Committee in accordance with section 109 or 110.
- (8) However, the Domestic Offsets Integrity Committee must not publish particular information under subsection (7) if the applicant has requested the Committee not to publish the information.
- (9) A request under subsection (8) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Committee.
- (10) The Domestic Offsets Integrity Committee must refuse to endorse the proposal if:
 - (a) the applicant has made a request under subsection (8) for the Committee not to publish particular information; and
 - (b) the Committee is satisfied that failing to publish that information could reasonably be expected to substantially prejudice the ability of the public to make well-informed submissions on the proposal under subsection (5).
- (11) The Domestic Offsets Integrity Committee must publish on the Department's website any submissions under subsection (5) received within the time limit referred to in subparagraph (5)(a)(ii).
- (12) However, the Domestic Offsets Integrity Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to substantially prejudice the commercial interests of the person or another person.
- (13) A request under subsection (12) must:
 - (a) be in writing; and

(b) be in a form approved, in writing, by the Committee.

Notification

(14) As soon as practicable after making a decision under subsection (2), the Domestic Offsets Integrity Committee must give the applicant a notice that sets out:

- (a) the decision; and
- (b) if the decision is to refuse to endorse the proposal—the reasons for the decision.

(14A) Within 28 days of giving a notice under subsection (14), the Domestic Offsets Integrity Committee must publish on its website the reasons for the endorsement of the proposal or the refusal to endorse the proposal, as the case may be.

Instrument is not a legislative instrument

(15) An instrument under subsection (2) is not a legislative instrument.

113 Advice about endorsement of proposal

Scope

(1) This section applies if the Domestic Offsets Integrity Committee endorses a proposal for a methodology determination under section 112.

Advice

(2) As soon as practicable after endorsing the proposal, the Committee must, by written notice given to the Minister, advise the Minister of the endorsement.

Subdivision B—Variation of methodology determinations

114 Variation of methodology determinations

(1) The Minister may, by legislative instrument, vary a methodology determination.

Section 114

- (2) The Minister must not vary a methodology determination unless:
- (a) the variation gives effect to a particular proposal for the variation of a methodology determination; and
 - (b) the Domestic Offsets Integrity Committee has:
 - (i) endorsed the proposal under section 120; and
 - (ii) advised the Minister of the endorsement under section 121; and
 - (c) the varied determination complies with the offsets integrity standards; and
 - (d) the varied determination does not specify a kind of offsets project by reference to a State or a part of a State; and
 - (e) the varied determination complies with such requirements (if any) as are specified in regulations made for the purposes of paragraph 106(4)(e); and
 - (f) the method specified in the varied determination in accordance with paragraph 106(1)(c) or (d) includes a calculation of a baseline for the project; and
 - (g) in a case where:
 - (i) a method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007* is a method by which the amounts of the emissions of greenhouse gases from a particular source are to be measured for the purposes of that Act; and
 - (ii) the method specified in the varied methodology determination in accordance with paragraph 106(1)(c) or (d) involves the measurement of emissions of greenhouse gases from that source;
- the varied methodology determination provides that the emissions are to be measured, under the method specified in the varied methodology determination in accordance with paragraph 106(1)(c) or (d), in the same way as they are measured under the method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*.

Note: For *baseline*, see section 107.

- (3) If:
-

- (a) an applicant applies under section 116 to the Domestic Offsets Integrity Committee for the endorsement of a proposal for the variation of a methodology determination; and
 - (b) the Domestic Offsets Integrity Committee:
 - (i) endorses the proposal under section 120; and
 - (ii) advises the Minister of the endorsement under section 121; and
 - (c) the Minister decides not to vary the methodology determination so as to give effect to the proposal;
- the Minister must, as soon as practicable after making the decision, give the applicant a notice that sets out:
- (d) the decision; and
 - (e) the reasons for the decision.
- (4) Subsection (2) does not, by implication, prevent the Minister from:
- (a) asking the Domestic Offsets Integrity Committee to give the Minister additional advice about a matter arising under this section; or
 - (b) asking another body or person to give the Minister advice about a matter arising under this section.
- (5) Subsection (1) of this section does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.
- (6) If:
- (a) the Domestic Offsets Integrity Committee:
 - (i) endorses a particular proposal for the variation of a methodology determination under section 120; and
 - (ii) advises the Minister of the endorsement under section 121; and
 - (b) the Minister decides:
 - (i) to vary the methodology determination so as to give effect to the proposal; or
 - (ii) not to vary the methodology determination so as to give effect to the proposal;

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the Minister must, as soon as practicable after making the decision, cause a copy of the Domestic Offset Integrity Committee's advice under section 120 to be published on the Department's website.

115 When variation takes effect

A variation of a methodology determination takes effect:

- (a) on the day on which the instrument varying the methodology determination is made; or
- (b) if a later day is specified in the instrument—on that later day.

116 Application for endorsement of proposal for the variation of a methodology determination

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

117 Form of application

- (1) An application under section 116 must:
 - (a) be in writing; and
 - (b) set out the proposal; and
 - (c) be in a form approved, in writing, by the Domestic Offsets Integrity Committee; and
 - (d) be accompanied by such information as is specified in the regulations; and
 - (e) be accompanied by such other documents (if any) as are specified in the regulations; and
 - (f) be accompanied by the fee (if any) specified in the regulations.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (3) A fee specified under paragraph (1)(f) must not be such as to amount to taxation.

118 Further information

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

119 Withdrawal of application

- (1) An applicant may withdraw the application at any time before the Domestic Offsets Integrity Committee makes a decision on the application.
- (2) This Act does not prevent the applicant from making a fresh application.
- (3) If:
 - (a) the applicant withdraws the application; and
 - (b) the applicant has paid a fee in relation to the application;the Domestic Offsets Integrity Committee must, on behalf of the Commonwealth, refund the application fee.

120 Endorsement of proposal for variation of methodology determination

Scope

- (1) This section applies if an application under section 116 has been made for the endorsement of a proposal for the variation of a methodology determination.

Endorsement

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

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- (a) endorse the proposal; or
 - (b) refuse to endorse the proposal.
- (3) The Domestic Offsets Integrity Committee must not endorse the proposal unless the Committee is satisfied that, if the Minister were to vary the methodology determination so as to give effect to the proposal:
- (a) the varied determination would comply with the offsets integrity standards; and
 - (b) the varied determination would not specify a kind of offsets project by reference to a State or a part of a State; and
 - (c) the varied determination would comply with such requirements (if any) as are specified in regulations made for the purposes of paragraph 106(4)(e); and
 - (d) the method specified in the varied determination in accordance with paragraph 106(1)(c) or (d) would include a calculation of a baseline for the project; and
 - (e) in a case where:
 - (i) a method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007* is a method by which the amounts of the emissions of greenhouse gases from a particular source are to be measured for the purposes of that Act; and
 - (ii) the method specified in the varied methodology determination in accordance with paragraph 106(1)(c) or (d) involves the measurement of emissions of greenhouse gases from that source;the varied methodology determination would provide that the emissions are to be measured, under the method specified in the varied methodology determination in accordance with paragraph 106(1)(c) or (d), in the same way as they are measured under the method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*.
- (4) If:
- (a) a Domestic Offsets Integrity Committee member:
 - (i) is an SES employee in the Department; or

- (ii) holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department; and
- (b) the member advises the Committee that, if the Minister were to vary the methodology determination so as to give effect to the proposal, the varied determination would not comply with the offsets integrity standard set out in paragraph 133(1)(c); then, for the purposes of paragraph (3)(a) of this section, the Domestic Offsets Integrity Committee is to assume that the varied determination would not comply with that offsets integrity standard.

Note: Paragraph 133(1)(c) deals with consistency with the National Inventory Report.

Consultation and publication

- (5) The Domestic Offsets Integrity Committee must not endorse the proposal unless the Committee has first:
 - (a) published on the Department's website:
 - (i) the proposal; and
 - (ii) a notice inviting the public to make a submission to the Committee on the proposal by a specified time limit; and
 - (b) considered any submissions that were received within that time limit.
- (6) The time limit must not be shorter than 40 days.
- (7) If the Domestic Offsets Integrity Committee publishes the proposal on the Department's website under subsection (5), the Committee may also publish on the Department's website information given by the applicant to the Committee in accordance with section 117 or 118.
- (8) However, the Domestic Offsets Integrity Committee must not publish particular information under subsection (5) if the applicant has requested the Committee not to publish the information.
- (9) A request under subsection (8) must:
 - (a) be in writing; and

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- (b) be in a form approved, in writing, by the Committee.
- (10) The Domestic Offsets Integrity Committee must refuse to endorse the proposal if:
 - (a) the applicant has made a request under subsection (8) for the Committee not to publish particular information; and
 - (b) the Committee is satisfied that failing to publish that information could reasonably be expected to substantially prejudice the ability of the public to make well-informed submissions on the proposal under subsection (5).
- (11) The Domestic Offsets Integrity Committee must also publish on the Department's website any submissions under subsection (5) received within the time limit referred to in subparagraph (5)(a)(ii).
- (12) However, the Domestic Offsets Integrity Committee must not publish a particular submission made by a person if the person has requested the Committee not to publish the submission on the ground that publication of the submission could reasonably be expected to substantially prejudice the commercial interests of the person or another person.
- (13) A request under subsection (12) must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Committee.

Notification

- (14) As soon as practicable after making a decision under subsection (2), the Domestic Offsets Integrity Committee must give the applicant a notice that sets out:
 - (a) the decision; and
 - (b) if the decision is to refuse to endorse the proposal—the reasons for the decision.

Instrument is not a legislative instrument

- (15) An instrument under subsection (2) is not a legislative instrument.

121 Advice about endorsement of proposal

Scope

- (1) This section applies if the Domestic Offsets Integrity Committee endorses a proposal for the variation of a methodology determination under section 120.

Advice

- (2) As soon as practicable after endorsing the proposal, the Committee must, by written notice given to the Minister, advise the Minister of the endorsement.

Subdivision C—Duration of methodology determinations

122 Duration of methodology determinations

- (1) A methodology determination:
 - (a) comes into force:
 - (i) when it is made; or
 - (ii) if a later time is specified in the determination—at that later time; and
 - (b) unless sooner revoked, remains in force for:
 - (i) the period specified in the determination; or
 - (ii) if a longer period is specified in relation to the determination in a legislative instrument made by the Minister—that longer period.
- (2) Paragraph (1)(a) has effect subject to:
 - (a) subsection (3) of this section; and
 - (b) section 130.

Note: Section 130 deals with approval of the application of a specified methodology determination to a project with effect from the start of a reporting period.

- (3) If a methodology determination is made on or before 30 June 2012, the determination may be expressed to have come into force at the start of 1 July 2010.

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- (4) If a methodology determination expires, this Act does not prevent the Minister from making a fresh methodology determination in the same terms as the expired determination.

Subdivision D—Revocation of methodology determinations

123 Revocation of methodology determinations

- (1) The Minister may, by legislative instrument, revoke a methodology determination.
- (2) Before revoking a methodology determination, the Minister must request the Domestic Offsets Integrity Committee to advise the Minister about whether the Minister should revoke the determination.
- (3) In deciding whether to revoke a methodology determination, the Minister must have regard to the following:
- (a) whether the determination complies with the offsets integrity standards;
 - (b) any advice given by the Domestic Offsets Integrity Committee under subsection (2);
 - (c) such other matters (if any) as the Minister considers relevant.
- (4) Subsection (1) of this section does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.
- (5) If the Minister decides:
- (a) to revoke a methodology determination; or
 - (b) not to revoke a methodology determination;
- the Minister must, as soon as practicable after making the decision, cause a copy of any advice given by the Domestic Offset Integrity Committee under subsection (2) in relation to the determination to be published on the Department's website.

Subdivision E—Applicable methodology determination

124 Applicable methodology determination for a reporting period

For the purposes of this Act, if a methodology determination applies to an eligible offsets project throughout a reporting period for the project, the determination is the applicable methodology determination for the reporting period.

125 Original methodology determination continues to apply after expiry

Scope

- (1) This section applies if a methodology determination (the *original determination*) that covers an eligible offsets project expires, in accordance with section 122, at any time during a crediting period for the project.

Continuation

- (2) Despite the expiry:
 - (a) the original determination continues to apply to the project during the remainder of the crediting period as if the original determination had not expired; and
 - (b) no other methodology determination applies to the project during the remainder of the crediting period.
- (3) However, if the Administrator approves, under section 130, the application of another methodology determination to the project, with effect from a particular time, subsection (2) does not apply to the project during so much of the crediting period as occurs after that time.

Section 126

126 Original methodology determination continues to apply after variation

Scope

- (1) This section applies if a methodology determination (the *original determination*) that covers an eligible offsets project is varied, under section 114, at any time during a crediting period for the project.

Continuation

- (2) Despite the variation, the original determination continues to apply to the project during the remainder of the crediting period as if the original determination had not been varied.
- (3) However, if the Administrator approves, under section 130:
 - (a) the application of another methodology determination to the project, with effect from a particular time; or
 - (b) the application of the original determination as varied to the project, with effect from a particular time;subsection (2) does not apply to the project during so much of the crediting period as occurs after that time.

127 Original methodology determination continues to apply after revocation

Scope

- (1) This section applies if a methodology determination (the *original determination*) that covers an eligible offsets project is revoked, under section 123, at any time during a crediting period for the project.

Continuation

- (2) Despite the revocation:
 - (a) the original determination continues to apply to the project during the remainder of the crediting period as if the original determination had not been revoked; and

- (b) no other methodology determination applies to the project during the remainder of the crediting period.
- (3) However, if the Administrator approves, under section 130, the application of another methodology determination to the project, with effect from a particular time, subsection (2) does not apply to the project during so much of the crediting period as occurs after that time.

128 Request to approve application of methodology determination to a project with effect from the start of a reporting period

- (1) During a reporting period for an eligible offsets project, the project proponent for the project may request the Administrator to approve the application of a specified methodology determination to the project with effect from the start of the reporting period.
- (2) A request must:
 - (a) be in writing; and
 - (b) be in a form approved, in writing, by the Administrator; and
 - (c) be accompanied by such information as is specified in the regulations; and
 - (d) be accompanied by such other documents (if any) as are specified in the regulations; and
 - (e) be accompanied by the fee (if any) specified in the regulations.
- (3) It is immaterial whether the end of the reporting period is known when the request is made.
- (4) The approved form of request may provide for verification by statutory declaration of statements in requests.
- (5) A fee specified under paragraph (2)(e) must not be such as to amount to taxation.

129 Further information

- (1) The Administrator may, by written notice given to a person who made a request, require the person to give the Administrator,

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within the period specified in the notice, further information in connection with the request.

- (2) If the person breaches the requirement, the Administrator may, by written notice given to the person:
 - (a) refuse to consider the request; or
 - (b) refuse to take any action, or any further action, in relation to the request.

130 Administrator may approve application of methodology determination to a project with effect from the start of a reporting period

Scope

- (1) This section applies if, during a reporting period for an eligible offsets project, a request under section 128 has been made for the approval of the application of a specified methodology determination to the project with effect from the start of the reporting period.

Approval

- (2) After considering the request, the Administrator may, by writing, approve the application of the methodology determination to the project with effect from the start of the reporting period.
- (3) The Administrator must not give an approval under subsection (2) unless the Administrator is satisfied that the project is covered by the methodology determination.

Notification of approval

- (4) As soon as practicable after giving an approval under subsection (2), the Administrator must give a copy of the approval to the person who made the request.

Refusal

- (5) If the Administrator decides to refuse to approve the application of the methodology determination to the project, the Administrator

must give written notice of the decision to the person who made the request.

Approval is not a legislative instrument

- (6) An approval given under subsection (2) is not a legislative instrument.

Subdivision F—Transitional

131 Transitional—pre-commencement application for endorsement of proposal

Scope

- (1) This section applies if, before the commencement of this section:
- (a) a person applied to the Interim Domestic Offsets Integrity Committee for the endorsement of a proposal for a methodology determination; and
 - (b) the Committee neither:
 - (i) endorsed the proposal; nor
 - (ii) refused to endorse the proposal.
- (2) To avoid doubt, the proposal did not have to be in the form of a draft methodology determination.

Effect of application

- (3) The person's application has effect, after the commencement of this section, as if it were an application under section 108 for the endorsement of the proposal.

132 Transitional—pre-commencement endorsement of proposal

Scope

- (1) This section applies if:
- (a) before the commencement of this section, a person applied to the Interim Domestic Offsets Integrity Committee for the

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endorsement of a proposal for a methodology determination;
and

(b) before the commencement of this section, the Committee endorsed the proposal; and

(c) assuming that:

(i) sections 112 and 113 had been in force at all material times before the commencement of this section; and

(ii) a reference in those sections to the Domestic Offsets Integrity Committee were a reference to the Interim Domestic Offsets Integrity Committee; and

(iii) the reference in subsection 112(6) to 40 days were a reference to 30 days;

the Interim Domestic Offsets Integrity Committee complied with those sections in relation to the proposal.

(2) To avoid doubt, the proposal did not have to be in the form of a draft methodology determination.

Effect of application

(3) The person's application has effect, after the commencement of this section, as if it were an application under section 108 for the endorsement of the proposal.

Effect of proposal

(4) This Act has effect as if the Domestic Offsets Integrity Committee had, immediately after the commencement of this section:

(a) endorsed the proposal under section 112; and

(b) advised the Minister of the endorsement under section 113.

Division 3—Offsets integrity standards

133 Offsets integrity standards

- (1) For the purposes of this Act, the *offsets integrity standards* are as follows:
- (a) a project of a kind specified in a methodology determination in accordance with paragraph 106(1)(a) should be covered by the additionality test regulations;
 - (b) to the extent to which a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) involves ascertaining any of the following:
 - (i) the removal of one or more greenhouse gases from the atmosphere;
 - (ii) the reduction of emissions of one or more greenhouse gases into the atmosphere;
 - (iii) the emission of one or more greenhouse gases into the atmosphere;the removal, reduction or emission, as the case may be, should be:
 - (iv) measurable; and
 - (v) capable of being verified;
 - (c) a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) should not be inconsistent with the methods set out in the National Inventory Report;
 - (d) a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) should be supported by relevant scientific results published in peer-reviewed literature; and
 - (e) a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) should provide that, in ascertaining whichever of the following is applicable:
 - (i) the carbon dioxide equivalent net abatement amount for a project;

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- (ii) the carbon dioxide equivalent net sequestration amount for a project;
there is to be a deduction of the carbon dioxide equivalence of the amount that, under the determination, is taken to be the total amount of greenhouse gases that are emitted from any source or sources as a consequence of carrying out the project;
- (f) a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) in relation to a sequestration offsets project should provide for adjustments to take account of significant cyclical variations that are likely to occur in the amount of carbon sequestered in the relevant carbon pool on the project area or project areas during:
 - (i) a 100-year period; or
 - (ii) if, at the time when the methodology determination was made, another period was specified in the regulations—that other period;
- (g) to the extent to which a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) involves an estimate, projection or assumption—the estimate, projection or assumption should be conservative;
- (h) if:
 - (a) a method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007* is a method by which the amounts of the emissions of greenhouse gases from a particular source are to be measured for the purposes of that Act; and
 - (b) a method specified in a methodology determination in accordance with paragraph 106(1)(c) or (d) involves the measurement of emissions of greenhouse gases from that source;

the methodology determination should provide that the emissions are to be measured, under the method specified in the methodology determination in accordance with paragraph 106(1)(c) or (d), in the same way as they are measured under the method determined under subsection 10(3) of the *National Greenhouse and Energy Reporting Act 2007*.

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Note 1: For the additionality test, see section 41.

Note 2: The permanence of sequestration is dealt with in the following provisions of this Act:

- (a) sections 16 and 17 provide for a risk of reversal buffer;
- (b) sections 90 and 91 provide for relinquishment of Australian carbon credit units in the event of a reversal of sequestration;
- (c) Part 8 provides for carbon maintenance obligations.

- (2) Paragraph (1)(f) does not apply to a sequestration offsets project of a kind specified in the regulations.
- (3) Subsection (2) of this section does not, by implication, limit the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.

Conservative estimates, projections or assumptions

- (4) The Minister may, by legislative instrument, make a determination providing that a specified estimate, projection or assumption is taken to be conservative for the purposes of this section.

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

- (5) The Minister may, by legislative instrument, make a determination providing that a specified estimate, projection or assumption is taken not to be conservative for the purposes of this section.

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

Methods determined under the National Greenhouse and Energy Reporting Act 2007

- (6) To avoid doubt, if a methodology determination complies with paragraph (1)(h) in relation to emissions of greenhouse gases from a particular source, the method specified in the methodology determination in accordance with paragraph 106(1)(c), to the extent that it involves the measurement of emissions of greenhouse gases from that source, is taken, for the purposes of this section, to be supported by relevant scientific results published in peer-reviewed literature.

Part 10—Multiple project proponents

Division 1—Introduction

134 Simplified outline

The following is a simplified outline of this Part:

- If there are multiple project proponents for an offsets project, a reference in this Act to the project proponent is to be read as a reference to each of the project proponents.
- Multiple project proponents for an offsets project may nominate a nominee for the purposes of:
 - (a) the service of documents; and
 - (b) the taking of eligible voluntary actions (for example, the making of an application).
- If there are multiple project proponents for an offsets project, obligations are imposed on each of the proponents, but may be discharged by any of the proponents.

Division 2—References to project proponents

135 References to project proponents

Sequestration offsets projects

- (1) If:
- (a) an offsets project is a sequestration offsets project; and
 - (b) there are 2 or more persons (the ***multiple project proponents***) who:
 - (i) have joint responsibility for carrying out the project; and
 - (ii) jointly have the legal right to carry out the project; and
 - (iii) jointly hold the applicable carbon sequestration right in relation to the project area, or each of the project areas;
- then:
- (c) for the purposes of this Act, each of the multiple project proponents is a project proponent for the project; and
 - (d) a reference in:
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) another instrument made under this Act;to the project proponent for the offsets project is to be read as a reference to each of the multiple project proponents.

Emissions avoidance offsets projects

- (2) If:
- (a) an offsets project is an emissions avoidance offsets project; and
 - (b) there are 2 or more persons (the ***multiple project proponents***) who:
 - (i) have joint responsibility for carrying out the project; and
 - (ii) jointly have the legal right to carry out the project;
- then:

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Division 2 References to project proponents

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- (c) for the purposes of this Act, each of the multiple project proponents is a project proponent for the project; and
- (d) a reference in:
 - (i) this Act; or
 - (ii) the regulations; or
 - (iii) any other instrument under this Act;to the project proponent for the offsets project is to be read as a reference to each of the multiple project proponents.

Division 3—Nominee of multiple project proponents

136 Nomination of nominee by multiple project proponents

Scope

- (1) This section applies to an offsets project if there are 2 or more project proponents (the *multiple project proponents*) for the project.

Nomination

- (2) The multiple project proponents may, by joint written notice given to the Administrator, nominate one of them as being their *nominee* in relation to the offsets project.
- (3) The joint written notice must be in a form approved, in writing, by the Administrator.
- (4) A notice under subsection (2) may accompany an application under this Act or the regulations. In this case, the nomination is taken to have been given immediately before the application was made.

Revocation of nomination

- (5) If:
 - (a) a person has been nominated under subsection (2) in relation to an eligible offsets project; and
 - (b) one of the project proponents for the eligible offsets project, by written notice given to the Administrator, revokes the nomination;the nomination ceases to be in force.

Cessation of nomination—nominee ceases to be a project proponent

- (6) If:
 - (a) a person has been nominated under subsection (2) in relation to an eligible offsets project; and

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Division 3 Nominee of multiple project proponents

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- (b) the nominee ceases to be one of the project proponents for the eligible offsets project;
the nomination ceases to be in force.

137 Service of documents on nominee

Scope

- (1) This section applies if there are 2 or more project proponents (the ***multiple project proponents***) for an offsets project.

Service of documents

- (2) For the purposes of this Act, if:
 - (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (b) the nomination is in force; and
 - (c) a document relating to the eligible offsets project is required or permitted by this Act to be given to the project proponent; and
 - (d) the document is given to the nominee;the document is taken to have been given to each of the multiple project proponents.

138 Eligible voluntary action taken by nominee

Scope

- (1) This section applies if there are 2 or more project proponents (the ***multiple project proponents***) for an offsets project.

Eligible voluntary action to be taken by nominee

- (2) If:
 - (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (b) the nomination is in force; and
 - (c) the nominee takes an eligible voluntary action; and

- (d) the application, nomination, request or notice to which the eligible voluntary action relates is expressed to be made, withdrawn or given, as the case may be, on behalf of the multiple project proponents;
- this Act and the regulations have effect as if:
- (e) the application, nomination, request or notice to which the eligible voluntary action relates were made, withdrawn or given, as the case may be, by the multiple project proponents jointly; and
- (f) if the eligible voluntary action is the making of an application under section 22 for the declaration of an offsets project as an eligible offsets project—each reference in subparagraphs 27(4)(h)(vii) and (i)(v) to the applicant holding the applicable carbon sequestration right in relation to the project were a reference to the multiple project proponents jointly holding the applicable carbon sequestration right in relation to the project; and
- (g) if the eligible voluntary action is the making of an application, under regulations made for the purposes of subsection 29(1), for the variation of the declaration of an eligible offsets project—each reference (if any) in those regulations to the applicant holding the applicable carbon sequestration right in relation to the varied project were a reference to the multiple project proponents jointly holding the applicable carbon sequestration right in relation to the varied project; and
- (h) if the eligible voluntary action is the making of an application—a reference in this Act or the regulations (other than a reference mentioned in paragraph (f) or (g)) to the applicant were a reference to each of the multiple project proponents.
- (3) The multiple project proponents are not entitled to take an eligible voluntary action except in accordance with subsection (2).

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**139 Unilateral revocation of declaration of eligible offsets project—
failure of multiple project proponents to nominate a
nominee**

- (1) The regulations may make provision for and in relation to empowering the Administrator to revoke a declaration under section 27 in relation to an offsets project.
- (2) Regulations made for the purposes of subsection (1) must not empower the Administrator to revoke a declaration unless:
 - (a) there are 2 or more project proponents (the *multiple project proponents*) for the offsets project; and
 - (b) a declaration is in force under section 27 in relation to the project; and
 - (c) the multiple project proponents have nominated a person under subsection 136(2); and
 - (d) the nomination ceases to be in force; and
 - (e) 90 days pass, and no new nomination under subsection 136(2) is made by the multiple project proponents.
- (3) Regulations made for the purposes of subsection (1) must require the Administrator to consult the multiple project proponents before deciding to revoke a declaration.

140 Designation of nominee account

Scope

- (1) This section applies if:
 - (a) there are 2 or more project proponents (the *multiple project proponents*) for an eligible offsets project; and
 - (b) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (c) the nomination is in force.

Request for nominee account

- (2) The nominee may:

- (a) request the Administrator, under regulations made for the purposes of subsection 10(1) of the *Australian National Registry of Emissions Units Act 2011*, to open a Registry account in the name of the nominee; and
 - (b) request the Administrator to designate that account as the nominee account for the eligible offsets project.
- (3) A request under paragraph (2)(b) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Administrator; and
 - (c) be accompanied by such information as is specified in the regulations; and
 - (d) be accompanied by such other documents (if any) as are specified in the regulations; and
 - (e) be accompanied by the fee (if any) specified in the regulations.
- (4) The approved form of request may provide for verification by statutory declaration of statements in requests.
- (5) A fee specified under paragraph (3)(e) must not be such as to amount to taxation.

Designation of nominee account

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

141 Issue of Australian carbon credit units to nominee account

Scope

- (1) This section applies if there are 2 or more project proponents (the ***multiple project proponents***) for an eligible offsets project.

Application for issue of Australian carbon credit units

- (2) If:

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- (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
- (b) the nomination is in force; and
- (c) a nominee account for the project is kept in the name of the nominee; and
- (d) the nominee makes an application under section 12 for the issue of a certificate of entitlement in respect of the project for a reporting period;

paragraph 13(1)(c) does not apply to the application.

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

Issue of Australian carbon credit units

(3) If:

- (a) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
- (b) the nomination is in force; and
- (c) a nominee account for the project is kept in the name of the nominee; and
- (d) apart from this subsection, the Administrator is required under section 11 to issue one or more Australian carbon credit units to the multiple project proponents in relation to the eligible offsets project;

then:

- (e) the Administrator must comply with the requirement by issuing the units to the nominee and making an entry for the units in the nominee account; and
- (f) subsections 11(5) and (6) do not apply to the issue of the units.

(4) If:

- (a) no nomination made by the multiple project proponents under subsection 136(2) in relation to the project is in force; and
- (b) apart from this subsection, the Administrator is required under section 11 to issue one or more Australian carbon

credit units to the multiple project proponents in relation to the eligible offsets project;
the Administrator must not issue the units.

142 Units held in nominee account

Scope

- (1) This section applies to a Registry account that has been designated as the nominee account for an eligible offsets project.

Units held in account

- (2) Australian carbon credit units held in the nominee account are held on trust for the persons who are, for the time being, the project proponents for the project.

143 Instructions in relation to nominee account

Scope

- (1) This section applies to a Registry account that has been designated as the nominee account for an eligible offsets project.

Instructions by nominee

- (2) A person is not entitled to give instructions under:
 - (a) this Act; or
 - (b) the *Australian National Registry of Emissions Units Act 2011*;to the Administrator in relation to the nominee account unless:
 - (c) the account is kept in the name of the person; and
 - (d) the person has been nominated as a nominee under subsection 136(2) in relation to the project; and
 - (e) the nomination is in force.
- (3) If an instruction complies with subsection (2), the instruction is taken to have been given on behalf of the project proponents for the project.

144 Updating nominee account details on change of nominee

Scope

- (1) This section applies if:
- (a) there are 2 or more project proponents (the *multiple project proponents*) for an eligible offsets project; and
 - (b) the multiple project proponents have nominated a nominee under subsection 136(2) in relation to the project; and
 - (c) a nominee account for the project is kept in the name of the nominee; and
 - (d) the nomination ceases to be in force; and
 - (e) a new nomination of a nominee (the *new nominee*) is made under subsection 136(2).

Updating account details

- (2) As soon as practicable after receiving the new nomination, the Administrator must make the necessary alterations in the Registry to substitute the name of the new nominee for the name of the old nominee.

Division 4—Obligations of multiple project proponents

145 Obligations of multiple project proponents

Scope

- (1) This section applies if:
 - (a) there are 2 or more project proponents (the *multiple project proponents*) for the eligible offsets project; and
 - (b) any of the following:
 - (i) this Act;
 - (ii) the regulations;
 - (iii) another instrument made under this Act; imposes an obligation on the project proponent for the project.

Obligations of project proponent

- (2) The obligation is imposed on each of the multiple project proponents, but may be discharged by any of the multiple project proponents.
- (3) The regulations may exempt a specified obligation from the scope of subsection (2).

Part 11—Australian carbon credit units

Division 1—Introduction

146 Simplified outline

The following is a simplified outline of this Part:

- The Administrator may issue Australian carbon credit units.
- An Australian carbon credit unit is generally transferable.
- Entries may be made in Registry accounts for Australian carbon credit units.

Division 2—Issue of Australian carbon credit units

147 Issue of Australian carbon credit units

The Administrator may, on behalf of the Commonwealth, issue units, to be known as Australian carbon credit units.

148 How Australian carbon credit units are to be issued

- (1) The Administrator is to issue an Australian carbon credit unit to a person by making an entry for the unit in a Registry account kept by the person.
- (2) The Administrator must not issue an Australian carbon credit unit to a person unless the person has a Registry account.

149 Circumstances in which Australian carbon credit units may be issued

The Administrator must not issue an Australian carbon credit unit otherwise than in accordance with Part 2.

Division 3—Property in, and transfer of, Australian carbon credit units

150 An Australian carbon credit unit is personal property

An Australian carbon credit unit is personal property and, subject to sections 152 and 153, is transmissible by assignment, by will and by devolution by operation of law.

151 Transfer of Australian carbon credit units

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

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

152 Transmission of Australian carbon credit units by assignment

- (1) A transmission by assignment of an Australian carbon credit unit is of no force until:
 - (a) the transferor, by electronic notice transmitted to the Administrator, instructs the Administrator to transfer the unit from the relevant Registry account kept by the transferor to a Registry account kept by the transferee; and
 - (b) the Administrator complies with that instruction.

- (2) An instruction under paragraph (1)(a) must set out:
 - (a) the account number of the transferor's Registry account; and
 - (b) the account number of the transferee's Registry account.
- (3) If the Administrator receives an instruction under paragraph (1)(a), the Administrator must comply with the instruction as soon as practicable after receiving it.
- (4) The Registry must set out a record of each instruction under paragraph (1)(a).
- (5) If the transferor is the Commonwealth, the Minister may give an instruction under subsection (1) on behalf of the transferor.

153 Transmission of Australian carbon credit units by operation of law etc.

Scope

- (1) This section applies if an Australian carbon credit unit is transmitted from a person (the *transferor*) to another person (the *transferee*) by any lawful means other than by a transfer under section 152.

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) of the *Australian National Registry of Emissions Units Act 2011*, for the Administrator to open a Registry account in the name of the transferee.

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- (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) of the *Australian National Registry of Emissions Units Act 2011*, 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.

154 Outgoing international transfers of Australian carbon credit units

Scope

- (1) This section applies if:
- (a) a person (the *first person*) keeps a Registry account in which
there is an entry for an Australian carbon credit unit; and
 - (b) the first person, by electronic notice transmitted to the
Administrator, instructs the Administrator to transfer the unit
from the Registry account to:
 - (i) a foreign account kept by another person; or
 - (ii) a foreign account kept by the first person; and
 - (c) if the unit is a Kyoto Australian carbon credit unit—the
instruction does not contravene regulations made for the
purposes of section 155 of this Act or subsection 41(3) of the
Australian National Registry of Emissions Units Act 2011.
- (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.

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Compliance with instruction

- (3) If the Administrator receives an instruction under subsection (1), 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 from the relevant Registry account kept by the first person.
- (5) If the unit is a Kyoto Australian carbon credit unit, regulations made for the purposes of subsection (3) may require the Administrator to transfer an assigned amount unit from a Commonwealth holding account to a voluntary cancellation account.
- (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.

155 Restrictions on outgoing international transfers of Kyoto Australian carbon credit units

The regulations may prevent, restrict or limit the transfer of Kyoto Australian carbon credit units from a Registry account to a foreign account.

156 Transfer of Australian carbon credit units to another Registry account held by the transferor

Scope

- (1) This section applies if:
 - (a) a person keeps a Registry account (the *first Registry account*) in which there is an entry for an Australian carbon credit unit; and
 - (b) the person, by electronic notice transmitted to the Administrator, instructs the Administrator to transfer the unit

from the first Registry account to another Registry account kept by the person; and

- (c) the instruction sets out:
- (i) the account number of the first Registry account; and
 - (ii) the account number of the other Registry account.

Compliance with instruction

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

157 Exchange of Kyoto Australian carbon credit units for Kyoto units

Scope

- (1) This section applies if:
 - (a) a person keeps a Registry account in which there is an entry for a Kyoto Australian carbon credit unit issued to the person; and
 - (b) before 1 July 2013, the person, by electronic notice transmitted to the Administrator, instructs the Administrator to exchange the unit for whichever of the following units is specified in the instruction:
 - (i) an assigned amount unit;
 - (ii) if the Kyoto Australian carbon credit unit was issued in respect of a sequestration offsets project—a removal unit;
 - (iii) if the Kyoto Australian carbon credit unit was issued in respect of a joint implementation project—an emission reduction unit; and
 - (c) the instruction sets out the account number of the Registry account; and
 - (d) the conditions (if any) specified in the regulations are satisfied; and

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- (e) the instruction does not contravene regulations made for the purposes of subsection 41(4) of the *Australian National Registry of Emissions Units Act 2011*.

Compliance with instruction

- (2) If the Administrator receives an instruction under paragraph (1)(b), the Administrator must take such steps as are required by the regulations.
- (3) Regulations made for the purposes of subsection (2) may require the Administrator to:
 - (a) cancel the Kyoto Australian carbon credit unit; and
 - (b) remove the entry for the Kyoto Australian carbon credit unit from the Registry account; and
 - (c) transfer an assigned amount unit, a removal unit, or an emission reduction unit, as the case requires, from a Commonwealth holding account to the Registry account.
- (4) For the purposes of this Act, the assigned amount unit, removal unit or emission reduction unit transferred to the Registry account is taken to have been exchanged for the Kyoto Australian carbon credit unit.
- (5) The Registry must set out a record of the instruction under paragraph (1)(b).

158 Equitable interests in relation to an Australian carbon credit unit

- (1) This Act does not affect:
 - (a) the creation of; or
 - (b) any dealings with; or
 - (c) the enforcement of;equitable interests in relation to an Australian carbon credit unit.
- (2) Subsection (1) has effect subject to:
 - (a) section 50; and
 - (b) regulations made for the purposes of section 51; and
 - (c) section 142.

(3) This section is enacted for the avoidance of doubt.

Part 12 Publication of information

Division 1 Introduction

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Part 12—Publication of information

Division 1—Introduction

159 Simplified outline

The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">• The Administrator must publish certain information about the operation of this Act. |
|---|

Division 2—Information about units

160 Information about issue of Australian carbon credit units

As soon as practicable after Australian carbon credit units are issued to a person, the Administrator must publish on the Administrator's website:

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

161 Quarterly reports about issue of Australian carbon credit units

As soon as practicable after the end of each quarter, the Administrator must publish on the Administrator's website the total number of Australian carbon credit units issued during the quarter.

162 Publication of concise description of the characteristics of Australian carbon credit units

The Administrator must:

- (a) before 31 December 2011, publish on the Administrator's website a statement setting out a concise description of the characteristics of Australian carbon credit units; and
- (b) keep that statement up-to-date.

Division 3—Information about voluntary cancellation of units

163 Information about number of voluntarily cancelled Australian carbon credit units

As soon as practicable after one or more Australian carbon credit units held by a person are cancelled under section 173, the Administrator must publish on the Administrator's website:

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

Division 4—Information about relinquishment requirements

164 Information about relinquishment requirements

Scope

- (1) This section applies if, under this Act, a person is required, during a financial year, to relinquish a particular number of Australian carbon credit units.

Relinquishment requirement

- (2) The Administrator must publish on the Administrator's website:
 - (a) the name of the person; and
 - (b) details of the relinquishment requirement.
- (3) If any of the following paragraphs applies:
 - (a) the decision to require the person to relinquish a specified number of Australian carbon credit units is being reconsidered by the Administrator under section 242;
 - (b) the decision to require the person to relinquish a specified number of Australian carbon credit units has been affirmed or varied by the Administrator under section 242, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
 - (c) the decision to require the person to relinquish a specified number of Australian carbon credit units is the subject of an application for review by the Administrative Appeals Tribunal;the Administrator must:
 - (d) publish an appropriate annotation on the Administrator's website; and
 - (e) if paragraph (a) applies—when the Administrator notifies the applicant for reconsideration of the Administrator's decision

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- on the reconsideration, the Administrator must publish an appropriate annotation on the Administrator's website; and
- (f) if paragraph (b) or (c) applies—when the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised, the Administrator must publish an appropriate annotation on the Administrator's website.

165 Information about unpaid administrative penalties

Scope

- (1) This section applies if:
- (a) under this Act, a person is required to relinquish a particular number of Australian carbon credit units; and
 - (b) during a financial year, an amount (the *penalty amount*) payable by the person under section 179 in relation to non-compliance with the relinquishment requirement remains unpaid after the time when the penalty amount became due for payment.

Penalty amount

- (2) The Administrator must publish on the Administrator's website:
- (a) the name of the person; and
 - (b) details of the unpaid penalty amount.

166 Information about number of relinquished units

Scope

- (1) This section applies if:
- (a) under this Act, a person is required to relinquish a particular number of Australian carbon credit units; and
 - (b) during a financial year, the person relinquishes one or more Australian carbon credit units in order to comply with the requirement.

Australian carbon credit units relinquished

- (2) As soon as practicable after receiving the relinquishment notice, the Administrator must publish on the Administrator's website:
- (a) the name of the person; and
 - (b) the total number of Australian carbon credit units relinquished.

Division 5—Register of Offsets Projects

167 Register of Offsets Projects

- (1) The Administrator must keep a register, to be known as the Register of Offsets Projects.
- (2) The Register of Offsets Projects is to be maintained by electronic means.
- (3) The Register of Offsets Projects is to be made available for inspection on the Administrator’s website.
- (4) The Administrator must ensure that the Register of Offsets Projects is up-to-date.

168 Entries in the Register

- (1) The Register of Offsets Projects must set out, for each eligible offsets project:
 - (a) the name of the project; and
 - (b) the project area or project areas; and
 - (c) a description of the project; and
 - (d) whether the project is a joint implementation project; and
 - (e) the location of the project; and
 - (f) the project proponent for the project; and
 - (g) the name of the applicable methodology determination; and
 - (h) whether the relevant declaration under section 27 is subject to a condition that all relevant regulatory approvals must be obtained before the end of the first crediting period for the project; and
 - (i) if the project area, or any of the project areas, is covered by a regional natural resource management plan—whether the project is consistent with the plan; and
 - (j) whether the project is subject to the voluntary automatic unit cancellation regime;

- (k) if any Kyoto Australian carbon credit units have been issued in relation to the project in accordance with Part 2:
 - (i) the total number of units so issued; and
 - (ii) the financial year, or each of the financial years, in which those units were so issued; and
 - (iii) the name of the person, or each of the persons, to whom those units have been issued; and
 - (iv) if any of those units have been exchanged for assigned amount units—the total number of units so exchanged, and the financial year, or each of the financial years, in which those units were so exchanged; and
 - (v) if any of those units have been exchanged for removal units—the total number of units so exchanged, and the financial year, or each of the financial years, in which those units were so exchanged; and
 - (vi) if any of those units have been exchanged for emission reduction units—the total number of units so exchanged, and the financial year, or each of the financial years, in which those units were so exchanged; and
- (l) if any non-Kyoto Australian carbon credit units have been issued in relation to the project in accordance with Part 2:
 - (i) the total number of units so issued; and
 - (ii) the financial year, or each of the financial years, in which those units were so issued; and
 - (iii) the name of the person, or each of the persons, to whom those units have been issued; and
- (m) if any Australian carbon credit units have been relinquished in order to comply with a requirement under Part 7 in relation to the project—the total number of units so relinquished; and
- (n) if the project area or project areas are subject to a carbon maintenance obligation:
 - (i) a statement to that effect; and
 - (ii) the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2; and
- (o) if:

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- (i) the project proponent for the project has requested the Administrator that particular information about the environmental benefits, or community benefits, of the project be set out in the Register of Offsets Projects; and
 - (ii) the request has not been withdrawn; and
 - (iii) the requested information meets the requirements specified in the regulations;
the requested information; and
 - (p) if the project is a joint implementation project—such other information relating to the project as is specified in the regulations; and
 - (q) such other information (if any) relating to the project as the Administrator considers appropriate.
- (2) Paragraph (1)(b) has effect subject to section 169.
- (3) If one or more areas of land that were formerly a project area or project areas of an eligible offsets project are subject to a carbon maintenance obligation, the Register of Offsets Projects must:
- (a) set out a statement to that effect; and
 - (b) identify the area or areas of land; and
 - (c) set out the net total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.
- (4) Regulations made for the purposes of paragraph (1)(p) must be consistent with the Kyoto rules.

169 Requests for information about project area not to be set out in the Register

- (1) The Register of Offsets Projects must not set out the project area or project areas for an eligible offsets project if:
- (a) the project proponent for the project has requested the Administrator not to set out the project area or project areas in the Register of Offsets Projects; and
 - (b) the Administrator is satisfied that:
 - (i) the setting out of the project area or project areas could reasonably be expected to substantially prejudice the

- commercial interests of the project proponent or another person; and
- (ii) the prejudice outweighs the public interest in the setting out of the project area or project areas.
- (2) A request under subsection (1) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Administrator.
- (3) The Administrator must take all reasonable steps to ensure that a decision is made on the request within 30 days after the request was made.
- (4) If the Administrator decides to refuse the request, the Administrator must give written notice of the decision to the project proponent.

Part 13—Fraudulent conduct

170 Simplified outline

The following is a simplified outline of this Part:

- If a person is convicted of an offence relating to fraudulent conduct, and the issue of Australian carbon credit units is attributable to the commission of the offence, a court may order the person to relinquish a specified number of Australian carbon credit units.

171 Units issued as a result of fraudulent conduct—court may order relinquishment

Scope

- (1) This section applies if:
 - (a) one or more Australian carbon credit units were issued to a person on a particular occasion; and
 - (b) the person has been convicted of an offence against:
 - (i) section 134.1 of the *Criminal Code*; or
 - (ii) section 134.2 of the *Criminal Code*; or
 - (iii) section 135.1 of the *Criminal Code*; or
 - (iv) section 135.2 of the *Criminal Code*; or
 - (v) section 135.4 of the *Criminal Code*; or
 - (vi) section 136.1 of the *Criminal Code*; or
 - (vii) section 137.1 of the *Criminal Code*; or
 - (viii) section 137.2 of the *Criminal Code*; and
 - (c) an appropriate court is satisfied that the issue of any or all of the units was directly or indirectly attributable to the commission of the offence.

Note: For *appropriate court*, see subsection (8).

Relinquishment

- (2) The court may, on application made by the Director of Public Prosecutions or the Administrator, order the person:
- (a) to relinquish a specified number of:
 - (i) Australian carbon credit units; or
 - (ii) Kyoto Australian carbon credit units; or
 - (iii) non-Kyoto Australian carbon credit units;not exceeding the number of Australian carbon credit units issued as mentioned in paragraph (1)(a); and
 - (b) to do so by a specified time.

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

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

Compliance

- (3) The person must comply with an order under subsection (2).

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

- (4) The person does not comply with an order under subsection (2) unless the notice of relinquishment under section 175 specifies the order.
- (5) To avoid doubt, the person is required to comply with an order under subsection (2) even if:
- (a) the person is not the registered holder of any Australian carbon credit units; or
 - (b) the person is not the registered holder of the number of Australian carbon credit units required to be relinquished; or
 - (c) if the order requires the person to relinquish Kyoto Australian carbon credit units:
 - (i) the person is not the registered holder of any Kyoto Australian carbon credit units; or
 - (ii) the person is not the registered holder of the number of Kyoto Australian carbon credit units required to be relinquished; or

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- (d) if the order requires the person to relinquish non-Kyoto Australian carbon credit units:
 - (i) the person is not the registered holder of any non-Kyoto Australian carbon credit units; or
 - (ii) the person is not the registered holder of the number of non-Kyoto Australian carbon credit units required to be relinquished.

Conviction

- (6) It is immaterial whether the conviction occurred before, at or after the commencement of this section.

Copy of order

- (7) A copy of an order under subsection (2) is to be given to the Administrator.

Appropriate court

- (8) For the purposes of this section, each of the following courts is an **appropriate court**:
 - (a) the court that convicted the person of the offence;
 - (b) the Federal Court;
 - (c) the Supreme Court of a State or Territory.

Spent convictions

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

Part 14—Voluntary cancellation of Australian carbon credit units

172 Simplified outline

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more Australian carbon credit units, the person may request the Administrator to cancel any or all of those units.

173 Voluntary cancellation of Australian carbon credit units

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

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- Kyoto unit from a Commonwealth holding account to a voluntary cancellation account before the end of the true-up period for the relevant commitment period; and
- (ii) the Administrator must comply with a direction under subparagraph (i).
- (4) The Registry must set out a record of each notice under subsection (1).

Part 15—Relinquishment of Australian carbon credit units

Division 1—Introduction

174 Simplified outline

The following is a simplified outline of this Part:

- If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Administrator, relinquish any or all of those units.
- An administrative penalty is payable for non-compliance with a relinquishment requirement under this Act.

Note 1: A person may voluntarily relinquish Australian carbon credit units in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project.

Note 2: A person may be required to relinquish Australian carbon credit units under Part 7.

Division 2—How Australian carbon credit units are relinquished

175 How Australian carbon credit units are relinquished

- (1) If a person is the registered holder of one or more Australian carbon credit units, the person may, by electronic notice transmitted to the Administrator, relinquish any or all of those units.
- (2) A notice under subsection (1) must:
 - (a) specify the Australian carbon credit unit or units that are being relinquished; and
 - (b) if the Australian carbon credit unit or units are being relinquished in order to comply with a requirement under Part 7—specify the requirement to which the relinquishment relates; and
 - (c) if the Australian carbon credit unit or units are being voluntarily relinquished in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project—set out a statement to that effect; and
 - (d) if the Australian carbon credit unit or units are being voluntarily relinquished in order to satisfy a condition for revocation of a subsection 97(2) declaration—set out a statement to that effect; and
 - (e) if the Australian carbon credit unit or units are being relinquished in order to comply with an order under subsection 171(2) (fraudulent conduct)—specify the order to which the relinquishment relates; and
 - (f) specify the account number or account numbers of the person's Registry account, or the person's Registry accounts, in which there is an entry or entries for the Australian carbon credit unit or units that are being relinquished.
- (3) If:
 - (a) an Australian carbon credit unit is relinquished by a person in order to comply with an order under subsection 171(2); and

- (b) the order was made because the person was convicted by a court of an offence that relates to Part 2;
- then:
- (c) the unit is cancelled; and
 - (d) 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) If:
- (a) an Australian carbon credit unit is relinquished by a person in order to comply with an order under subsection 171(2); and
 - (b) the order was made because the person was convicted by a court of an offence that does not relate to Part 2;
- then:
- (c) the Administrator must transfer the unit from the person's Registry account in which there is an entry for the unit to the Commonwealth relinquished units account; and
 - (d) when the unit is transferred to the Commonwealth relinquished units account, property in the unit is transferred to the Commonwealth.
- (5) If:
- (a) an Australian carbon credit unit is relinquished by a person in order to comply with a requirement under Part 7; or
 - (b) an Australian carbon credit unit is voluntarily relinquished in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; or
 - (c) an Australian carbon credit unit is voluntarily relinquished in order to satisfy a condition for revocation of a subsection 97(2) declaration;
- then:
- (d) the unit is cancelled; and
 - (e) the Administrator must remove the entry for the unit from the person's Registry account in which there is an entry for the unit.
- (6) The Registry must set out a record of each notice under subsection (1).
-

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176 Deemed relinquishment

Scope

- (1) This section applies if:
- (a) under this Act, a person is subject to a requirement to relinquish a particular number of Australian carbon credit units (the *relinquishment number*); and
 - (b) under section 11, the Administrator is required to issue to the person a particular number of Australian carbon credit units (the *issue number*).

Deemed relinquishment

- (2) If the issue number exceeds the relinquishment number:
- (a) the person is taken, immediately after the issue of the units mentioned in paragraph (1)(b) of this section, to have, by electronic notice transmitted to the Administrator under subsection 175(1), relinquished a number of those units equal to the relinquishment number; and
 - (b) that notice is taken to have specified, as the units that are being relinquished, such units as are determined by the Administrator; and
 - (c) that notice is taken to have specified the requirement mentioned in paragraph (1)(a) of this section as the requirement to which the relinquishment relates.
- (3) If the relinquishment number equals or exceeds the issue number:
- (a) the person is taken, immediately after the issue of the units mentioned in paragraph (1)(b) of this section, to have, by electronic notice transmitted to the Administrator under subsection 175(1), relinquished all of the units mentioned in paragraph (1)(b) of this section; and
 - (b) that notice is taken to have specified, as the units that are being relinquished, all of the units mentioned in paragraph (1)(b); and
 - (c) that notice is taken to have specified the requirement mentioned in paragraph (1)(a) of this section as the requirement to which the relinquishment relates.

177 Transfer of certain units instead of relinquishment of Kyoto Australian carbon credit units

Scope

- (1) This section applies if, under this Act:
- (a) a person is required to relinquish a particular number of Kyoto Australian carbon credit units; or
 - (b) a particular number of Kyoto Australian carbon credit units are being voluntarily relinquished by a person in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; or
 - (c) a particular number of Kyoto Australian carbon credit units are being voluntarily relinquished by a person in order to satisfy a condition for revocation of a subsection 97(2) declaration.

Transfer of certain units instead of relinquishment

- (2) The person may:
- (a) transfer to the Commonwealth an equal number of substitute units; and
 - (b) by electronic notice transmitted to the Administrator, inform the Administrator that the transfer is instead of the relinquishment of the Kyoto Australian carbon credit units.

Note: For *substitute unit*, see subsection (6).

- (3) A notice under subsection (2) must:
- (a) specify the substitute units that are being transferred; and
 - (b) if paragraph (1)(a) applies—specify the requirement concerned; and
 - (c) if paragraph (1)(b) applies—a statement to the effect that the units are being voluntarily relinquished in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; and
 - (d) if paragraph (1)(c) applies—a statement to the effect that the units are being voluntarily relinquished in order to satisfy a condition for revocation of a subsection 97(2) declaration.

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- (4) A transfer under subsection (2) must be in accordance with the regulations.

Consequences of transfer

- (5) If the person transfers the substitute units specified in the notice under subsection (2), this Act (other than subsections 175(3), (4) and (5)) has effect as if the person had relinquished the Kyoto Australian carbon credit units:
- (a) if paragraph (1)(a) applies—in order to comply with the requirement mentioned in that paragraph; or
 - (b) if paragraph (1)(b) applies—in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; or
 - (c) if paragraph (1)(c) applies—in order to satisfy a condition for revocation of a subsection 97(2) declaration.

Substitute unit

- (6) For the purposes of this section, each of the following is a **substitute unit**:
- (a) a certified emission reduction (other than a temporary certified emission reduction or a long-term certified emission reduction);
 - (b) an emission reduction unit;
 - (c) a removal unit;
 - (d) an assigned amount unit issued in Australia;
 - (e) a prescribed eligible carbon unit.
- (7) Subsection (6) has effect subject to subsection (8).
- (8) The regulations may provide that a specified unit is not a substitute unit for the purposes of this section.

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

178 Transfer of certain units instead of relinquishment of non-Kyoto Australian carbon credit units

Scope

- (1) This section applies if, under this Act:
- (a) a person is required to relinquish a particular number of non-Kyoto Australian carbon credit units; or
 - (b) a particular number of non-Kyoto Australian carbon credit units are being voluntarily relinquished by a person in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; or
 - (c) a particular number of non-Kyoto Australian carbon credit units are being voluntarily relinquished by a person in order to satisfy a condition for revocation of a subsection 97(2) declaration.

Transfer of certain units instead of relinquishment

- (2) The person may:
- (a) transfer to the Commonwealth an equal number of substitute units; and
 - (b) by electronic notice transmitted to the Administrator, inform the Administrator that the transfer is instead of the relinquishment of the non-Kyoto Australian carbon credit units.

Note: For *substitute unit*, see subsection (6).

- (3) A notice under subsection (2) must:
- (a) specify the substitute units that are being transferred; and
 - (b) if paragraph (1)(a) applies—specify the requirement concerned; and
 - (c) if paragraph (1)(b) applies—a statement to the effect that the units are being voluntarily relinquished in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; and
 - (d) if paragraph (1)(c) applies—a statement to the effect that the units are being voluntarily relinquished in order to satisfy a condition for revocation of a subsection 97(2) declaration.

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- (4) A transfer under subsection (2) must be in accordance with the regulations.

Consequences of transfer

- (5) If the person transfers the substitute units specified in the notice under subsection (2), this Act (other than subsections 175(3), (4) and (5)) has effect as if the person had relinquished the non-Kyoto Australian carbon credit units:
- (a) if paragraph (1)(a) applies—in order to comply with the requirement mentioned in that paragraph; or
 - (b) if paragraph (1)(b) applies—in order to satisfy a condition for revocation of a section 27 declaration in relation to an offsets project; or
 - (c) if paragraph (1)(c) applies—in order to satisfy a condition for revocation of a subsection 97(2) declaration.

Substitute unit

- (6) For the purposes of this section, each of the following is a **substitute unit**:
- (a) a Kyoto Australian carbon credit unit;
 - (b) a certified emission reduction (other than a temporary certified emission reduction or a long-term certified emission reduction);
 - (c) an emission reduction unit;
 - (d) a removal unit;
 - (e) an assigned amount unit issued in Australia;
 - (f) a prescribed eligible carbon unit.
- (7) Subsection (6) has effect subject to subsection (8).
- (8) The regulations may provide that a specified unit is not a substitute unit for the purposes of this section.

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

Division 3—Compliance with relinquishment requirements

179 Compliance with relinquishment requirements

Scope

- (1) This section applies if, under this Act:
- (a) a person is required to relinquish a particular number of Australian carbon credit units; and
 - (b) the person is required to do so by a particular time (the ***compliance deadline***).

No units relinquished

- (2) If, by the compliance deadline, the person has not relinquished any Australian carbon credit units in order to comply with the requirement, the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\begin{array}{l} \text{Number of units} \\ \text{required to be relinquished} \end{array} \times \text{Prescribed amount}$$

where:

prescribed amount means the greatest of the following amounts:

- (a) \$20;
- (b) if the Australian carbon credit units mentioned in paragraph (1)(a) are Kyoto Australian carbon credit units—200% of the market value of a Kyoto Australian carbon credit unit as at the compliance deadline;
- (c) if the Australian carbon credit units mentioned in paragraph (1)(a) are non-Kyoto Australian carbon credit units—200% of the market value of a non-Kyoto Australian carbon credit unit as at the compliance deadline.

Relinquishment of insufficient units

- (3) If, by the compliance deadline:

Part 15 Relinquishment of Australian carbon credit units

Division 3 Compliance with relinquishment requirements

Section 179

- (a) the person has relinquished one or more Australian carbon credit units in order to comply with the requirement; and
- (b) the number of relinquished units is less than the number of units required to be relinquished;

the person is liable to pay to the Commonwealth, by way of penalty, an amount worked out using the formula:

$$\left(\begin{array}{l} \text{Number of units} \\ \text{required to be} \\ \text{relinquished} \end{array} - \begin{array}{l} \text{Number of} \\ \text{relinquished units} \end{array} \right) \times \text{Prescribed amount}$$

where:

prescribed amount means the greatest of the following amounts:

- (a) \$20;
- (b) if the Australian carbon credit units mentioned in paragraph (1)(a) are Kyoto Australian carbon credit units—200% of the market value of a Kyoto Australian carbon credit unit as at the compliance deadline;
- (c) if the Australian carbon credit units mentioned in paragraph (1)(a) are non-Kyoto Australian carbon credit units—200% of the market value of a non-Kyoto Australian carbon credit unit as at the compliance deadline.

When penalty becomes due and payable

- (4) An amount payable under this section is due and payable at the end of 30 days after the compliance deadline.

Compliance

- (5) To avoid doubt, a person may be liable to pay a penalty under this section even if:
 - (a) the person is not the registered holder of any Australian carbon credit units; or
 - (b) the person is not the registered holder of the number of Australian carbon credit units required to be relinquished.

Market value

- (6) The regulations may provide that, for the purposes of this section, the **market value** of an Australian carbon credit unit is to be ascertained in accordance with the regulations.

180 Late payment penalty

Penalty

- (1) If an amount payable by a person under section 179 remains unpaid after the time when it became due for payment, the person is liable to pay, by way of penalty, an amount calculated at the rate of:
- (a) 20% per annum; or
 - (b) if a lower rate per annum is specified in the regulations—that lower rate per annum;
- on the amount unpaid, computed from that time.

Power to remit

- (2) The Administrator may remit the whole or a part of an amount payable under subsection (1) if:
- (a) the Administrator is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
 - (b) the Administrator is satisfied:
 - (i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
 - (ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the amount; or
 - (c) the Administrator is satisfied that there are special circumstances that make it reasonable to remit some or all of the amount.
- (3) The Administrator may exercise the power conferred by subsection (2):

Section 181

- (a) on written application being made to the Administrator by a person; or
- (b) on the Administrator's own initiative.

Refusal

- (4) If:
- (a) the Administrator decides to refuse to remit the whole or a part of an amount payable 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.

181 Recovery of penalties

An amount payable under section 179 or 180:

- (a) is a debt due to the Commonwealth; and
- (b) may be recovered by the Administrator, on behalf of the Commonwealth, by action in a court of competent jurisdiction.

182 Set-off

If:

- (a) an amount (the *first amount*) is payable under section 179 or 180 by a person; and
 - (b) the following conditions are satisfied in relation to another amount (the *second amount*):
 - (i) the amount is payable by the Commonwealth to the person;
 - (ii) the amount is of a kind specified in the regulations;
- the Administrator may, on behalf of the Commonwealth, set off the whole or a part of the first amount against the whole or a part of the second amount.

183 Refund of overpayments

Refund

- (1) If either of the following amounts has been overpaid by a person, the amount overpaid must be refunded by the Commonwealth:
- (a) an amount payable under section 179;
 - (b) an amount payable under section 180.

Note: For appropriation, see section 28 of the *Financial Management and Accountability Act 1997*.

Interest on overpayment

- (2) If:
- (a) an amount overpaid by a person is refunded by the Commonwealth under subsection (1); and
 - (b) the overpayment is attributable, in whole or in part, to an error made by the Administrator;
- interest calculated in accordance with subsection (3) is payable by the Commonwealth to the person in respect of the amount refunded.
- (3) Interest payable to a person under subsection (2) in respect of an amount refunded to the person is to be calculated:
- (a) in respect of the period that:
 - (i) began when the overpaid amount was paid to the Commonwealth; and
 - (ii) ended when the amount was refunded; and
 - (b) at the base interest rate (within the meaning of section 8AAD of the *Taxation Administration Act 1953*).
- (4) The Consolidated Revenue Fund is appropriated for the purposes of making payments of interest under subsection (2).

Part 16—Information-gathering powers

184 Simplified outline

The following is a simplified outline of this Part:

- The Administrator may obtain information or documents.

185 Administrator may obtain information or documents

Scope

- (1) This section applies to a person if the Administrator believes on reasonable grounds that the person has information or a document that is relevant to the operation of this Act or the associated provisions.

Requirement

- (2) The Administrator may, by written notice given to the person, require the person:
 - (a) to give to the Administrator, within the period and in the manner and form specified in the notice, any such information; or
 - (b) to produce to the Administrator, within the period and in the manner specified in the notice, any such documents; or
 - (c) to make copies of any such documents and to produce to the Administrator, within the period and in the manner specified in the notice, those copies.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.

Compliance

- (4) A person must comply with a requirement under subsection (2) to the extent that the person is capable of doing so.

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 21 provides for pecuniary penalties for breaches of civil penalty provisions.

No limitation

- (7) This section is not limited by any other provision of this Act that relates to the powers of the Administrator to obtain information or documents.

186 Copying documents—compensation

A person is entitled to be paid by the Administrator, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 185(2)(c).

187 Copies of documents

- (1) The Administrator may:
- (a) inspect a document or copy produced under subsection 185(2); and
 - (b) make and retain copies of, or take and retain extracts from, such a document.

Section 188

- (2) The Administrator may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 185(2)(c).

188 Administrator may retain documents

- (1) The Administrator may take, and retain for as long as is necessary, possession of a document produced under subsection 185(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Administrator to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Administrator must, at such times and places as the Administrator thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

189 Self-incrimination

- (1) A person is not excused from giving information or producing a document under section 185 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
 - (a) the information given or the document produced; or
 - (b) giving the information or producing the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;is not admissible in evidence against the individual:
 - (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 179 or 180); or

- (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

Part 17—Record-keeping and project monitoring requirements

Division 1—Introduction

190 Simplified outline

The following is a simplified outline of this Part:

- The regulations may require a person to:
 - (a) make a record of information; and
 - (b) retain the record.
- A person is subject to record-keeping requirements in relation to the preparation of an offsets report.
- A project proponent must comply with record-keeping and project monitoring requirements imposed by a methodology determination.

Division 2—Record-keeping requirements

191 Record-keeping requirements—general

- (1) The regulations may require a person to:
 - (a) make a record of specified information, where the information is relevant to this Act; and
 - (b) retain:
 - (i) the record; or
 - (ii) a copy of the record;for 7 years after the making of the record.
- (2) If a person is subject to a requirement under regulations made for the purposes of subsection (1), the person must comply with that requirement.

Ancillary contraventions

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

Civil penalty provisions

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

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

Other provisions do not limit this section

- (5) This section is not limited by any other provision of this Act that relates to the keeping or retention of records.

192 Record-keeping requirements—preparation of offsets report

Scope

- (1) This section applies if a person:
 - (a) made a record of particular information; and
 - (b) used the information to prepare an offsets report.

Record-keeping requirements

- (2) The regulations may require the person to retain:
 - (a) the record; or
 - (b) a copy of the record;for 7 years after the offsets report was given to the Administrator.
- (3) If a person is subject to a requirement under regulations made for the purposes of subsection (2), the person must comply with that requirement.

Ancillary contraventions

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

Civil penalty provisions

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

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

193 Record-keeping requirements—methodology determinations

Scope

- (1) This section applies if:
 - (a) a person is the project proponent for an eligible offsets project; and
 - (b) under the applicable methodology determination, the person is subject to a record-keeping requirement relating to the project.

Record-keeping requirement

- (2) The person must comply with the requirement.

Ancillary contraventions

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

Civil penalty provisions

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

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

Division 3—Project monitoring requirements

194 Project monitoring requirements—methodology determinations

Scope

- (1) This section applies if:
 - (a) a person is the project proponent for an eligible offsets project; and
 - (b) under the applicable methodology determination, the person is subject to a requirement to monitor the project.

Project monitoring requirement

- (2) The person must comply with the requirement.

Ancillary contraventions

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

Civil penalty provisions

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

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

Part 18—Monitoring powers

Division 1—Simplified outline

195 Simplified outline

The following is a simplified outline of this Part:

- An inspector may enter premises for the purpose of:
 - (a) determining whether this Act or the associated provisions have been complied with; or
 - (b) substantiating information provided under this Act or the associated provisions.
- Entry must be with the consent of the occupier of the premises or under a monitoring warrant.
- An inspector who enters premises may exercise monitoring powers. The inspector may be assisted by other persons if that assistance is necessary and reasonable.
- The occupier of the premises has certain rights and responsibilities.

Division 2—Appointment of inspectors and issue of identity cards

196 Appointment of inspectors

- (1) The Administrator may, in writing, appoint:
 - (a) a person who:
 - (i) is an SES employee, or acting SES employee, in the Department; or
 - (ii) is an APS employee who holds or performs the duties of an Executive Level 1 or 2 position, or an equivalent position, in the Department; or
 - (b) a member or special member of the Australian Federal Police;as an inspector for the purposes of this Act.
- (2) The Administrator must not appoint a person as an inspector unless the Administrator is satisfied that the person has suitable qualifications and experience to properly exercise the powers of an inspector.
- (3) An inspector must, in exercising powers as an inspector, comply with any directions of the Administrator.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

197 Identity cards

- (1) The Administrator must issue an identity card to an inspector.

Form of identity card

- (2) The identity card must:
 - (a) be in the form prescribed by the regulations; and
 - (b) contain a recent photograph of the inspector.

Offence

- (3) A person commits an offence if:
- (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an inspector; and
 - (c) the person does not, as soon as practicable after so ceasing, return the identity card to the Administrator.

Penalty: 1 penalty unit.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Defence—card lost or destroyed

- (5) Subsection (3) does not apply if the identity card was lost or destroyed.

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

Inspector must carry card

- (6) An inspector must carry his or her identity card at all times when exercising powers as an inspector.

Division 3—Powers of inspectors

Subdivision A—Monitoring powers

198 Inspector may enter premises by consent or under a warrant

- (1) For the purpose of:
 - (a) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (b) substantiating information provided under this Act or the associated provisions;an inspector may:
 - (c) enter any premises; and
 - (d) exercise the monitoring powers set out in section 199.
- (2) However, an inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect: see section 203.

199 Monitoring powers of inspectors

- (1) The following are the *monitoring powers* that an inspector may exercise in relation to premises under section 198:
 - (a) the power to search the premises and any thing on the premises;
 - (b) the power to examine any activity conducted on the premises;
 - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
 - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;

- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
- (h) the powers set out in subsections (2), (3) and (5).

Operating electronic equipment

- (2) The monitoring powers include the power to operate electronic equipment on the premises to see whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;contains information that is relevant to:
 - (c) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (d) substantiating information provided under this Act or the associated provisions.
- (3) The monitoring powers include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
 - (a) the power to operate electronic equipment on the premises to put the information in documentary form and remove the documents so produced from the premises;
 - (b) the power to operate electronic equipment on the premises to transfer the information to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.

Section 199

- (4) An inspector may operate electronic equipment as mentioned in subsection (2) or (3) only if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Securing things if entry to premises is under a monitoring warrant

- (5) If entry to the premises is under a monitoring warrant, the monitoring powers include the power to secure a thing for a period not exceeding 24 hours if:
- (a) the thing is found during the exercise of monitoring powers on the premises; and
 - (b) an inspector believes on reasonable grounds that:
 - (i) the thing affords evidence of the commission of an offence against this Act or of an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act; and
 - (ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
 - (iii) the circumstances are serious and urgent.
- (6) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (7) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (8) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (9) The 24 hour period:
- (a) may be extended more than once; and
 - (b) must not be extended more than 3 times.

200 Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) An inspector may, in entering premises under section 198 and in exercising monitoring powers in relation to the premises, be assisted by other persons if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

Powers of a person assisting the inspector

- (2) A person assisting the inspector may:
 - (a) enter the premises; and
 - (b) exercise monitoring powers in relation to the premises, but only in accordance with a direction given to the person by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) If a direction is given under paragraph (2)(b) in writing, the direction is not a legislative instrument.

Subdivision B—Powers of inspectors to ask questions and seek production of documents

201 Inspector may ask questions and seek production of documents

Entry with consent

- (1) If an inspector is authorised to enter premises because the occupier of the premises consented to the entry, the inspector may ask the occupier to:
 - (a) answer any questions relating to the operation of this Act or the associated provisions that are put by the inspector; and
 - (b) produce any document relating to the operation of this Act or the associated provisions that is requested by the inspector.

Section 202

Entry under a monitoring warrant

- (2) If an inspector is authorised to enter premises by a monitoring warrant, the inspector may require any person on the premises to:
- (a) answer any questions relating to the operation of this Act or the associated provisions that are put by the inspector; and
 - (b) produce any document relating to the operation of this Act or the associated provisions that is requested by the inspector.

Offence

- (3) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (2); and
 - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

202 Self-incrimination

- (1) A person is not excused from giving an answer or producing a document under section 201 on the ground that the answer or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
- (a) the answer given or the document produced; or
 - (b) giving the answer or producing the document; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the answer or producing the document;
- is not admissible in evidence against the individual:
- (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 179 or 180); or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

Division 4—Obligations and incidental powers of inspectors

203 Consent

- (1) An inspector must, before obtaining the consent of an occupier of premises for the purposes of paragraph 198(2)(a), inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

204 Announcement before entry under warrant

An inspector must, before entering premises under a monitoring warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
- (c) give any person at the premises an opportunity to allow entry to the premises.

205 Inspector to be in possession of warrant

If a monitoring warrant is being executed in relation to premises, an inspector executing the warrant must be in possession of the warrant or a copy of the warrant.

206 Details of warrant etc. to be given to occupier

If:

- (a) a monitoring warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- an inspector executing the warrant must, as soon as practicable:
- (c) make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it); and
 - (d) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 5.

207 Expert assistance to operate electronic equipment

- (1) This section applies to premises to which a monitoring warrant relates.

Securing equipment

- (2) If an inspector believes on reasonable grounds that:
 - (a) there is on the premises information that is relevant to:
 - (i) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (ii) substantiating information provided under this Act or the associated provisions;and that may be accessible by operating electronic equipment on the premises; and
 - (b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the information may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or other means.

- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

Period equipment may be secured

- (4) The equipment may be secured:
- (a) until the 24 hour period ends; or
 - (b) until the equipment has been operated by the expert;
- whichever happens first.

Extensions

- (5) If an inspector believes on reasonable grounds that the equipment needs to be secured for more than 24 hours, he or she may apply to a magistrate for an extension of that period.
- (6) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 24 hour period:
- (a) may be extended more than once; and
 - (b) must not be extended more than 3 times.

208 Compensation for damage to electronic equipment

- (1) This section applies if:
-

Part 18 Monitoring powers

Division 4 Obligations and incidental powers of inspectors

Section 208

- (a) as a result of electronic equipment being operated as mentioned in this Part:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) In this section:
- damage**, in relation to data, includes damage by erasure of data or addition of other data.

Division 5—Occupier's rights and responsibilities

209 Occupier entitled to observe execution of warrant

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

210 Occupier to provide inspector with facilities and assistance

- (1) The occupier of premises to which a monitoring warrant relates, or another person who apparently represents the occupier, must provide:
 - (a) an inspector executing the warrant; and
 - (b) any person assisting the inspector;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
 - (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty: 30 penalty units.

Division 6—Monitoring warrants

211 Monitoring warrants

Application for warrant

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to premises.

Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of:
 - (a) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (b) substantiating information provided under this Act or the associated provisions.
- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
 - (a) describe the premises to which the warrant relates; and
 - (b) state that the warrant is issued under this section; and
 - (c) state that the warrant is issued for the purpose of:
 - (i) determining whether this Act or the associated provisions have been, or are being, complied with; or
 - (ii) substantiating information provided under this Act or the associated provisions; and

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- (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in Divisions 3 and 4 in relation to the premises; and
- (e) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
- (f) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to be in force.

Division 7—Powers of magistrates

212 Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if he or she were exercising the power:
 - (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

Part 19—Audits

Division 1—Introduction

213 Simplified outline

The following is a simplified outline of this Part:

- The Administrator may require audits of one or more aspects of a person's compliance with this Act and the regulations to be carried out.

Division 2—Audits

214 Compliance audits

Scope

- (1) This section applies if:
 - (a) a person is, or has been, the project proponent for an eligible offsets project; and
 - (b) the Administrator has reasonable grounds to suspect that the person has contravened, is contravening, or is proposing to contravene, this Act or the associated provisions.

Audit

- (2) The Administrator may, by written notice given to the person, require the person to:
 - (a) appoint as an audit team leader:
 - (i) a registered greenhouse and energy auditor of the person's choice; or
 - (ii) if the Administrator specifies a registered greenhouse and energy auditor in the notice—that auditor; or
 - (iii) if the Administrator specifies more than one registered greenhouse and energy auditor in the notice—any one of those auditors; and
 - (b) arrange for the audit team leader to carry out an audit on one or more aspects of the person's compliance with this Act or the associated provisions; and
 - (c) arrange for the audit team leader to give the person a written report setting out the results of the audit; and
 - (d) give the Administrator a copy of the audit report on or before the day specified in the notice.

Note: For the conduct of an audit under this section, see section 75AA of the *National Greenhouse and Energy Reporting Act 2007*.

- (3) The notice must specify:
 - (a) the type of audit to be carried out; and

- (b) the matters to be covered by the audit; and
 - (c) the form of the audit report and the kinds of details it is to contain.
- (4) A person must provide the audit team leader, and any persons assisting the audit team leader, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.
- (5) If the Administrator gives a person written notice under subsection (2), the person must comply with the requirements of the notice.

Ancillary contraventions

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

Civil penalty provisions

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

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

Reimbursement

- (8) If:
- (a) the Administrator gives a person a notice under subsection (2); and
 - (b) in complying with that notice, the person arranges for an audit team leader to carry out an audit on one or more aspects of the person's compliance with this Act or the associated provisions; and

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- (c) the audit report does not indicate that there is evidence of non-compliance by the person with this Act or the associated provisions; and
 - (d) the person requests the Administrator to reimburse the person for reasonable costs incurred by the person in complying with the notice; and
 - (e) the Administrator is satisfied that the person would suffer financial hardship if the person were not reimbursed for those costs;
- the Administrator may, on behalf of the Commonwealth, reimburse the person for those costs.
- (9) A request under paragraph (8)(d) must:
- (a) be in writing; and
 - (b) be in a form approved, in writing, by the Administrator; and
 - (c) be accompanied by such information as is specified in the regulations; and
 - (d) be accompanied by such documents (if any) as are specified in the regulations.
- (10) The approved form of request may provide for verification by statutory declaration of statements in requests.

215 Other audits

Audit

- (1) If a person is, or has been, the project proponent for an eligible offsets project, the Administrator may appoint a registered greenhouse and energy auditor as an audit team leader to carry out an audit of the person's compliance with one or more aspects of this Act or the associated provisions.
- (2) The Administrator must give written notice to the person of a decision to appoint an audit team leader under subsection (1). The notice must:
 - (a) specify the audit team leader; and
 - (b) specify the period within which the audit is to be undertaken; and

- (c) specify the type of audit to be carried out; and
- (d) specify the matters to be covered by the audit; and
- (e) be given to the person at a reasonable time before the audit is to be undertaken.

Note: For the conduct of an audit under this section, see section 75 of the *National Greenhouse and Energy Reporting Act 2007*.

- (3) The person must provide the audit team leader, and any persons assisting the audit team leader, with all reasonable facilities and assistance necessary for the effective exercise of the audit team leader's duties under this Act.

Ancillary contraventions

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

Civil penalty provisions

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

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

Part 20—Liability of executive officers of bodies corporate

216 Simplified outline

The following is a simplified outline of this Part:

- If a body corporate contravenes a civil penalty provision, and an executive officer of the body corporate was involved in the contravention, the officer will contravene a civil penalty provision.

217 Civil penalties for executive officers of bodies corporate

- (1) If:
 - (a) a body corporate contravenes a civil penalty provision; and
 - (b) an executive officer of the body corporate knew that, or was reckless or negligent as to whether, the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention;the officer contravenes this subsection.
- (2) For the purposes of subsection (1), the officer is *reckless* as to whether the contravention would occur if:
 - (a) the officer is aware of a substantial risk that the contravention would occur; and
 - (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.
- (3) For the purposes of subsection (1), the officer is *negligent* as to whether the contravention would occur if the officer's conduct involves:

- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
 - (b) such a high risk that the contravention would occur;
- that the conduct merits the imposition of a pecuniary penalty.

Civil penalty provision

- (4) Subsection (1) is a *civil penalty provision*.

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

218 Reasonable steps to prevent contravention

- (1) For the purposes of section 217, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
- (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
 - (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with civil penalty provisions;
 - (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
 - (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware of the contravention.
- (2) This section does not limit section 217.

Part 21—Civil penalty orders

219 Simplified outline

The following is a simplified outline of this Part:

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

220 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.

221 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 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 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.

222 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*.

223 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.

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224 Time limit for application for an order

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

225 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.

226 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.

227 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.

228 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.

229 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.

230 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 same, or substantially the same, as those surrounding the previous occasion.

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- (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.

231 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 76(1);
 - (b) subsection 78(2);
 - (c) subsection 79(2);
 - (d) subsection 80(2);
 - (e) subsection 81(2);
 - (f) subsection 82(2);
 - (g) subsection 82(3);
 - (h) subsection 83(2);
 - (i) subsection 84(2);
 - (j) subsection 85(5);
 - (k) subsection 97(9);
 - (l) subsection 97(10);
 - (m) subsection 185(4);
 - (n) subsection 191(2);
 - (o) subsection 192(3);
 - (p) subsection 193(2);
 - (q) subsection 194(2);
 - (r) subsection 214(4);
 - (s) subsection 214(5);
 - (t) subsection 215(3).

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 230.

232 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 any of the following civil penalty provisions:
- (a) subsection 76(1);
 - (b) subsection 78(2);
 - (c) subsection 79(2);
 - (d) subsection 80(2);
 - (e) subsection 81(2);
 - (f) subsection 82(2);
 - (g) subsection 82(3);
 - (h) subsection 83(2);
 - (i) subsection 84(2);
 - (j) subsection 85(5);
 - (k) subsection 185(4);
 - (l) subsection 193(2);
 - (m) subsection 194(2);
 - (n) subsection 214(4);
 - (o) subsection 214(5);
- 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.

Section 232

- (3) The pecuniary penalty payable under subsection 221(1) for such a separate contravention in respect of a particular day must not exceed:
- (a) in the case of a contravention of subsection 185(4)—10% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted; or
 - (b) otherwise—5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (2) of this section had not been enacted.

Part 22—Offences relating to administrative penalties

233 Simplified outline

The following is a simplified outline of this Part:

- A person must not enter into a scheme:
 - (a) with the intention, knowledge or belief that the scheme will secure or achieve the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act; or
 - (b) if it would be reasonable to conclude that the person entered into the scheme for the sole or dominant purpose of securing or achieving the result that a body corporate or trust will be unable to pay an administrative penalty payable under this Act.

234 Scheme to avoid existing liability to pay administrative penalty

Intention

- (1) A person commits an offence if:
 - (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or

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- (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;
- having regard to the other debts of the body corporate or trust, to pay the penalty.

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

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (1); or
 - (b) a party to the scheme.

Knowledge or belief

- (3) A person commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) at or after the time when the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

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

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (3); or
 - (b) a party to the scheme.

Objective purpose

- (5) A person (the *first person*) commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) at or after the time when the penalty became due and payable, the first person entered into a scheme; and
 - (c) having regard to:
 - (i) the manner in which the scheme was entered into; and
 - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
 - (iii) the timing of the scheme;
it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that the body corporate or trust:
 - (iv) will be unable; or
 - (v) will be likely to be unable; or
 - (vi) will continue to be unable; or
 - (vii) will be likely to continue to be unable;
to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the first person; or
 - (b) a party to the scheme.

235 Scheme to avoid future liability to pay administrative penalty*Intention*

- (1) A person commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and

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- (b) before the penalty became due and payable, the person entered into a scheme; and
- (c) the person entered into the scheme with the intention of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;having regard to the other debts of the body corporate or trust, to pay the penalty.

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

- (2) For the purposes of subsection (1), it is immaterial whether the body corporate or the trustee of the trust is:
 - (a) the person mentioned in subsection (1); or
 - (b) a party to the scheme.

Knowledge or belief

- (3) A person commits an offence if:
 - (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) before the penalty became due and payable, the person entered into a scheme; and
 - (c) the person entered into the scheme with the knowledge or belief that the scheme will, or will be likely to, secure or achieve the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (i) will be unable; or
 - (ii) will be likely to be unable; or
 - (iii) will continue to be unable; or
 - (iv) will be likely to continue to be unable;

having regard to the other debts of the body corporate or trust, to pay the penalty.

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

- (4) For the purposes of subsection (3), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the person mentioned in subsection (3); or
 - (b) a party to the scheme.

Objective purpose

- (5) A person (the *first person*) commits an offence if:
- (a) a penalty is due and payable by a body corporate or trust under section 179; and
 - (b) before the penalty became due and payable, the first person entered into a scheme; and
 - (c) having regard to:
 - (i) the manner in which the scheme was entered into; and
 - (ii) the form and substance of the scheme, including any legal rights and obligations involved in the scheme and the economic and commercial substance of the scheme; and
 - (iii) the timing of the scheme;
it would be reasonable to conclude that the first person entered into the scheme for the sole or dominant purpose of securing or achieving the result, either generally or for a limited period, that, in the event that the body corporate or trust were to become liable to pay the penalty, the body corporate or trust:
 - (iv) will be unable; or
 - (v) will be likely to be unable; or
 - (vi) will continue to be unable; or
 - (vii) will be likely to continue to be unable;to pay the penalty.

Penalty: Imprisonment for 3 years or 850 penalty units, or both.

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- (6) For the purposes of subsection (5), it is immaterial whether the body corporate or the trustee of the trust is:
- (a) the first person; or
 - (b) a party to the scheme.

Part 23—Enforceable undertakings

236 Simplified outline

The following is a simplified outline of this Part:

- A person may give the Administrator an enforceable undertaking about compliance with this Act or the associated provisions.

237 Acceptance of undertakings

- (1) The Administrator may accept any of the following undertakings:
 - (a) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, take specified action;
 - (b) a written undertaking given by a person that the person will, in order to comply with this Act or the associated provisions, refrain from taking specified action;
 - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act or the associated provisions, or is unlikely to contravene this Act or the associated provisions, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Administrator.
- (4) The Administrator may, by written notice given to the person, cancel the undertaking.
- (5) The Administrator must publish the undertaking on the Administrator's website.

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238 Enforcement of undertakings

- (1) If:
- (a) a person has given an undertaking under section 237; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the Administrator considers that the person has breached the undertaking;
- the Administrator may apply to the Federal Court for an order under subsection (2) of this section.
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the Administrator, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Part 24—Review of decisions

Division 1—Introduction

239 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.
- Certain decisions of the Domestic Offsets Integrity Committee may be reviewed by the Administrative Appeals Tribunal.

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Division 2—Decisions of the Administrator

240 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 issue a certificate of entitlement under section 15.
2	A decision under subsection 15(3) to state that a specified number is the unit entitlement in respect of a certificate of entitlement.
3	A decision to refuse to declare that an offsets project is an eligible offsets project under section 27.
4	A decision, under regulations made for the purposes of subsection 29(1), to vary an eligible offsets project declaration.
5	A decision, under regulations made for the purposes of any of the following provisions, to refuse to vary an eligible offsets project declaration: (a) subsection 29(1); (b) subsection 30(1); (c) subsection 31(2).
6	A decision, under regulations made for the purposes of any of the following provisions, to revoke an eligible offsets project declaration: (a) subsection 32(1); (b) subsection 33(1); (c) subsection 34(1); (d) subsection 35(1); (e) subsection 36(1); (f) subsection 37(1); (g) subsection 38(1); (h) subsection 139(1).
7	A decision, under regulations made for the purposes of either of the following provisions, to refuse to revoke an eligible offsets project declaration:

Reviewable decisions

Item Decision

	(a) subsection 32(1); (b) subsection 33(1).
8	A decision to make a determination under section 57 or 58.
9	A decision to refuse to recognise a person as a recognised offsets entity under section 64.
10	A decision under section 65 to cancel a person's recognition as a recognised offsets entity.
11	A decision under section 74 to determine a subsequent crediting period for an eligible offsets project.
12	A decision under section 74 to refuse to determine a subsequent crediting period for an eligible offsets project.
13	A decision under section 88, 89, 90 or 91 to require a person to relinquish a specified number of Australian carbon credit units.
14	A decision to refuse to make a determination under section 95.
15	A decision to make a declaration under subsection 97(2).
16	A decision under section 98 to vary a carbon maintenance obligation declaration.
17	A decision under section 98 to refuse to vary a carbon maintenance obligation declaration.
18	A decision under section 99 to refuse to revoke a carbon maintenance obligation declaration.
19	A decision under section 130 to refuse to approve the application of a methodology determination to an eligible offsets project.
20	A decision to refuse to extend a period under subsection 153(5).
21	A decision under section 169 to refuse a request not to set out the project area or project areas for an eligible offsets project in the Register of Offsets Projects.
22	A decision to refuse to remit the whole or a part of an amount under subsection 180(2).

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241 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.

242 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.
-

- (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.

243 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.

244 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 242.
- (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.

245 Stay of proceedings for the recovery of an administrative penalty

Scope

- (1) This section applies if:
 - (a) a notice was given under section 88, 89, 90 or 91 in relation to a project that is or was an eligible offsets project; and
 - (b) the notice required a person to relinquish a particular number of Australian carbon credit units; and
 - (c) the person did not comply with the requirement within 90 days after the notice was given; and

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- (d) proceedings for the recovery of the penalty payable under section 179 in respect of the non-compliance with the requirement (including any late payment penalty payable under section 180 in relation to the section 179 penalty) are before a court; and
- (e) any of the following subparagraphs applies:
 - (i) the decision to require the person to relinquish a specified number of Australian carbon credit units is being reconsidered by the Administrator under section 242;
 - (ii) the decision to require the person to relinquish a specified number of Australian carbon credit units has been affirmed or varied by the Administrator under section 242, and the decision as so affirmed or varied is the subject of an application for review by the Administrative Appeals Tribunal;
 - (iii) the decision to require the person to relinquish a specified number of Australian carbon credit units is the subject of an application for review by the Administrative Appeals Tribunal.

Stay of proceedings

- (2) The court may stay the proceedings until:
 - (a) if subparagraph (1)(e)(i) applies—the Administrator notifies the applicant for reconsideration of the Administrator’s decision on the reconsideration; or
 - (b) if subparagraph (1)(e)(ii) or (iii) applies—the review by the Administrative Appeals Tribunal (including any court proceedings arising out of the review) has been finalised.
- (3) This section does not limit the power of:
 - (a) a court; or
 - (b) a Judge; or
 - (c) a magistrate;under any other law to order a stay of proceedings.

Division 3—Decisions of the Domestic Offsets Integrity Committee

245A Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of any of the following decisions of the Domestic Offsets Integrity Committee:

- (a) a decision under section 112 to refuse to endorse a proposal for a methodology determination;
- (b) a decision under section 120 to refuse to endorse a proposal for the variation of a methodology determination.

Part 25—Carbon Credits Administrator

246 Carbon Credits Administrator

- (1) There is to be a Carbon Credits Administrator.

Note: In this Act, *Administrator* means the Carbon Credits Administrator—see section 5.

- (2) The Administrator is to be a person who is:
- (a) an SES employee in the Department; and
 - (b) specified in a written instrument made by the Secretary.
- (3) An instrument under paragraph (2)(b) is not a legislative instrument.

247 Functions of the Administrator

The Administrator has the following functions:

- (a) such functions as are conferred on the Administrator by this Act or the regulations;
- (b) such functions as are conferred on the Administrator by the *Australian National Registry of Emissions Units Act 2011* or regulations under that Act;
- (c) such functions as are conferred on the Administrator by any other law of the Commonwealth;
- (d) to do anything incidental to or conducive to the performance of any of the above functions.

248 Acting Administrator

- (1) The Secretary may, by written instrument, appoint a person to act as the Administrator:
- (a) during a vacancy in the office of the Administrator (whether or not an appointment has previously been made to the office); or

- (b) during any period, or during all periods, when the Administrator:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) A person is not eligible for appointment to act as the Administrator unless the person is eligible for appointment as the Administrator.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

249 Delegation by the Administrator

- (1) The Administrator may, by writing, delegate any or all of the Administrator's functions or powers to:
 - (a) an SES employee, or acting SES employee, in the Department; or
 - (b) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department.
- (2) A delegate must comply with any written directions of the Administrator.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

250 Administrator to be assisted by APS employees in the Department

The Administrator is to be assisted by APS employees in the Department who are made available for the purpose by the Secretary.

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251 Other persons assisting the Administrator

The Administrator may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*) other than the Department; or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to the Administrator in connection with the performance of any of his or her functions.

252 Consultants

- (1) The Administrator may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Administrator.
- (2) The consultants are to be engaged on the terms and conditions that the Administrator determines in writing.

253 Minister may give directions to the Administrator

- (1) The Minister may, by legislative instrument, give directions to the Administrator in relation to the performance of his or her functions.

Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Administrator must comply with a direction under subsection (1).

Part 26—Domestic Offsets Integrity Committee

Division 1—Establishment and functions of the Domestic Offsets Integrity Committee

254 Establishment of the Domestic Offsets Integrity Committee

The Domestic Offsets Integrity Committee is established.

255 Functions of the Domestic Offsets Integrity Committee

The Domestic Offsets Integrity Committee has the following functions:

- (a) the functions that are conferred on it by this Act and the regulations;
- (b) to advise the Minister about matters that:
 - (i) relate to offsets projects; and
 - (ii) are referred to the Committee by the Minister;
- (c) to advise the Secretary about matters that:
 - (i) relate to offsets projects; and
 - (ii) are referred to the Committee by the Secretary;
- (d) to do anything incidental to or conducive to the performance of the above functions.

Division 2—Membership of the Domestic Offsets Integrity Committee

256 Membership of the Domestic Offsets Integrity Committee

The Domestic Offsets Integrity Committee consists of the following members:

- (a) a Chair;
- (b) at least 4, and not more than 5, other members.

257 Appointment of Domestic Offsets Integrity Committee members

- (1) Each Domestic Offsets Integrity Committee member is to be appointed by the Minister by written instrument.

Note: A Domestic Offsets Integrity Committee member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as a Domestic Offsets Integrity Committee member unless the Minister is satisfied that the person has:

- (a) substantial experience or knowledge; and
- (b) significant standing;

in at least one field of expertise that is relevant to the functions of the Domestic Offsets Integrity Committee.

- (3) The Minister must ensure that:
 - (a) the Chair of the Domestic Offsets Integrity Committee is not a person covered by subsection (4); and
 - (b) a majority of the other Domestic Offsets Integrity Committee members are not persons covered by subsection (4).
- (4) This subsection applies to the following persons:
 - (a) an employee of the Commonwealth;
 - (b) an employee of an authority of the Commonwealth;
 - (c) a person who holds a full-time office under a law of the Commonwealth.

- (5) The Minister must ensure that one Domestic Offsets Integrity Committee member:
 - (a) is an SES employee in the Department; or
 - (b) holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department.
- (6) The Minister must ensure that one Domestic Offsets Integrity Committee member is an officer of the Commonwealth Scientific and Industrial Research Organisation nominated by the Chief Executive of the Commonwealth Scientific and Industrial Research Organisation.
- (7) A Domestic Offsets Integrity Committee member holds office on a part-time basis.

258 Period for appointment for Domestic Offsets Integrity Committee members

A Domestic Offsets Integrity Committee member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see the *Acts Interpretation Act 1901*.

259 Acting Domestic Offsets Integrity Committee members

Acting Chair of Domestic Offsets Integrity Committee

- (1) The Minister may appoint a Domestic Offsets Integrity Committee member to act as the Chair of the Domestic Offsets Integrity Committee:
 - (a) during a vacancy in the office of the Domestic Offsets Integrity Committee Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair of the Domestic Offsets Integrity Committee:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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Acting Domestic Offsets Integrity Committee member (other than the Chair)

- (2) The Minister may appoint a person to act as a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee):
- (a) during a vacancy in the office of a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Eligibility

- (3) A person is not eligible for appointment to act as:
- (a) the Chair of the Domestic Offsets Integrity Committee; or
 - (b) a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee);
- unless the person is eligible for appointment as a Domestic Offsets Integrity Committee member.

Note: See subsection 257(2).

Validation

- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

260 Procedures

- (1) The regulations may prescribe the procedures to be followed at or in relation to meetings of the Domestic Offsets Integrity Committee, including matters relating to the following:
 - (a) the convening of meetings of the Domestic Offsets Integrity Committee;
 - (b) the number of Domestic Offsets Integrity Committee members who are to constitute a quorum;
 - (c) the selection of a Domestic Offsets Integrity Committee member to preside at meetings of the Domestic Offsets Integrity Committee in the absence of the Chair of the Domestic Offsets Integrity Committee;
 - (d) the manner in which questions arising at a meeting of the Domestic Offsets Integrity Committee are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Domestic Offsets Integrity Committee if:
 - (a) without meeting, a majority of Domestic Offsets Integrity Committee members indicate agreement with the resolution in accordance with the method determined by the Domestic Offsets Integrity Committee under subsection (3); and
 - (b) all Domestic Offsets Integrity Committee members were informed of the proposed resolution, or reasonable efforts had been made to inform all Domestic Offsets Integrity Committee members of the proposed resolution.
- (3) Subsection (2) applies only if the Domestic Offsets Integrity Committee:
 - (a) determines that it applies; and
 - (b) determines the method by which Domestic Offsets Integrity Committee members are to indicate agreement with resolutions.
- (4) If a Domestic Offsets Integrity Committee member is an APS employee in the Department, the member:
 - (a) is not entitled to vote for a resolution at a meeting of the Domestic Offsets Integrity Committee; and

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- (b) is not entitled to indicate agreement with a resolution as mentioned in paragraph (2)(a); and
- (c) is not to be counted for the purposes of determining whether a majority of Domestic Offsets Integrity Committee members:
 - (i) have voted for a resolution at a meeting of the Domestic Offsets Integrity Committee; or
 - (ii) have indicated agreement with a resolution as mentioned in paragraph (2)(a).

261 Disclosure of interests to the Minister

A Domestic Offsets Integrity Committee member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

262 Disclosure of interests to Domestic Offsets Integrity Committee

- (1) A Domestic Offsets Integrity Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Domestic Offsets Integrity Committee must disclose the nature of the interest to a meeting of the Domestic Offsets Integrity Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Domestic Offsets Integrity Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Domestic Offsets Integrity Committee.
- (4) Unless the Domestic Offsets Integrity Committee otherwise determines, the Domestic Offsets Integrity Committee member:
 - (a) must not be present during any deliberation by the Domestic Offsets Integrity Committee on the matter; and
 - (b) must not take part in any decision of the Domestic Offsets Integrity Committee with respect to the matter.

- (5) For the purposes of making a determination under subsection (4), the Domestic Offsets Integrity Committee member:
 - (a) must not be present during any deliberation of the Domestic Offsets Integrity Committee for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Domestic Offsets Integrity Committee.

263 Outside employment

A Domestic Offsets Integrity Committee member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

264 Remuneration and allowances

- (1) A Domestic Offsets Integrity Committee member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A Domestic Offsets Integrity Committee member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

265 Leave of absence

- (1) The Minister may grant leave of absence to the Chair of the Domestic Offsets Integrity Committee on the terms and conditions that the Minister determines.
- (2) The Chair of the Domestic Offsets Integrity Committee may grant leave of absence to a Domestic Offsets Integrity Committee member on the terms and conditions that the Chair determines.

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266 Resignation

- (1) A Domestic Offsets Integrity Committee member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

267 Termination of appointment

- (1) The Minister may terminate the appointment of a Domestic Offsets Integrity Committee member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a Domestic Offsets Integrity Committee member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence, for 3 consecutive meetings of the Domestic Offsets Integrity Committee; or
 - (c) the member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 263); or
 - (d) the member fails, without reasonable excuse, to comply with section 261 or 262.
- (3) The Minister may terminate the appointment of the Chair of the Domestic Offsets Integrity Committee if the Chair is:
 - (a) an employee of the Commonwealth; or
 - (b) an employee of an authority of the Commonwealth; or
 - (c) a person who holds a full-time office under a law of the Commonwealth.

- (4) The Minister may terminate the appointment of a Domestic Offsets Integrity Committee member if the Minister is of the opinion that the performance of the member has been unsatisfactory.

268 Other terms and conditions

A Domestic Offsets Integrity Committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

269 Assistance to Domestic Offsets Integrity Committee

- (1) Any or all of the following bodies:
- (a) the Administrator;
 - (b) the Department;
 - (c) any other Department, agency or authority of the Commonwealth;
- may assist the Domestic Offsets Integrity Committee in the performance of its functions.
- (2) The assistance may include the following:
- (a) the provision of information;
 - (b) the provision of advice;
 - (c) the making available of resources and facilities (including secretariat services and clerical assistance).
- (3) If an officer or employee of a body mentioned in subsection (1) assists the Domestic Offsets Integrity Committee, the officer or employee is taken, for the purposes of this Act, to be a person assisting the Domestic Offsets Integrity Committee under this section.

Part 27—Secrecy

270 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted public official; and
 - (b) the person has obtained protected information in his or her capacity as an entrusted public official; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure or use is authorised by a provision of this Part;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act or a legislative instrument under this Act, an entrusted public official is not to be required:
- (a) to produce to a court or tribunal a document containing protected information; or
 - (b) to disclose protected information to a court or tribunal.

271 Disclosure or use for the purposes of this Act or a legislative instrument under this Act

An entrusted public official may disclose or use protected information if:

- (a) the disclosure or use is for the purposes of this Act or a legislative instrument under this Act; or
- (b) the disclosure or use is for the purposes of the *Australian National Registry of Emissions Units Act 2011* or a legislative instrument under that Act;
- (c) the disclosure or use is for the purposes of the performance of the functions of the Administrator or the Domestic Offsets Integrity Committee under this Act or a legislative instrument under this Act; or
- (d) the disclosure or use is in the course of the entrusted public official's employment or service as an entrusted public official.

272 Disclosure to the Minister

An entrusted public official may disclose protected information to the Minister.

273 Disclosure to the Secretary etc.

An entrusted public official may disclose protected information to:

- (a) the Secretary; or
- (b) an officer of the Department who is authorised by the Secretary, in writing, for the purposes of this section;

if the disclosure is for the purposes of:

- (c) advising the Minister; or
- (d) facilitating Australia's compliance with its international obligations under:
 - (i) the Climate Change Convention; or
 - (ii) the Kyoto Protocol; or
 - (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol; or

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- (e) facilitating the development of an international agreement (if any) that is to be the successor (whether immediate or otherwise) to the Kyoto Protocol.

274 Disclosure or use for purposes of development of methodology determinations etc.

- (1) The Administrator may disclose or use protected information that relates to a particular offsets project if:
 - (a) under section 27, the Administrator has declared the offsets project to be an eligible offsets project; and
 - (b) more than 7 years have passed since the application under section 22 was made for the declaration; and
 - (c) the information was:
 - (i) contained in the application; or
 - (ii) given in connection with the application; or
 - (iii) contained in an offsets report about the project; and
 - (d) the disclosure or use is for the purposes of facilitating the development of either or both of the following:
 - (i) one or more methodology determinations;
 - (ii) one or more proposals for methodology determinations.
- (2) The Administrator may disclose or use protected information if:
 - (a) the information was:
 - (i) contained in an application under section 108 for endorsement of a specified proposal for a methodology determination; or
 - (ii) contained in an application under section 116 for endorsement of a specified proposal for the variation of a methodology determination; or
 - (iii) given in connection with an application covered by subparagraph (i) or (ii); and
 - (b) more than 7 years have passed since the application was made; and
 - (c) the disclosure or use is for the purposes of facilitating the development of either or both of the following:
 - (i) one or more methodology determinations;

- (ii) one or more proposals for methodology determinations.
- (3) Subsections (1) and (2) do not apply to personal information (within the meaning of the *Privacy Act 1988*).

275 Disclosure to a Royal Commission

- (1) An entrusted public official may disclose protected information to a Royal Commission.
- (2) The Administrator may, by writing, impose conditions to be complied with in relation to protected Administrator information disclosed under subsection (1) by:
 - (a) the Administrator; or
 - (b) a delegate of the Administrator; or
 - (c) a person assisting the Administrator under section 250; or
 - (d) a person whose services are made available to the Administrator under section 251; or
 - (e) a person engaged as a consultant under section 252; or
 - (f) an audit team leader; or
 - (g) a person assisting an audit team leader.
- (3) The Chair of the Domestic Offsets Integrity Committee may, by writing, impose conditions to be complied with in relation to protected DOIC information disclosed under subsection (1) by:
 - (a) the Chair; or
 - (b) a Domestic Offsets Integrity Committee member; or
 - (c) a person assisting the Domestic Offsets Integrity Committee under section 269.
- (4) An instrument under subsection (2) or (3) is not a legislative instrument.

276 Disclosure to certain persons and bodies

Scope

- (1) This section applies if the Administrator is satisfied that particular protected Administrator information will enable or assist any of the following persons or bodies:
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- (a) the Greenhouse and Energy Data Officer;
- (b) Australian Carbon Trust Limited (ACN 141 478 748);
- (c) a prescribed professional disciplinary body;
- (d) a person or body responsible for the administration of a scheme that involves the issue of prescribed eligible carbon units;

to perform or exercise any of the functions or powers of the person or body.

Disclosure

- (2) The Administrator may disclose that protected Administrator information to the person or body concerned.
- (3) If any of the following individuals:
 - (a) a delegate of the Administrator;
 - (b) an individual assisting the Administrator under section 250;
 - (c) an individual whose services are made available to the Administrator under section 251;
 - (d) an individual engaged as a consultant under section 252;
 - (e) an individual who is an audit team leader;
 - (f) an individual assisting an audit team leader;

is authorised by the Administrator, in writing, for the purposes of this section, the individual may disclose that protected Administrator information to the person or body concerned.

Secondary disclosure and use

- (4) A person commits an offence if:
 - (a) the person is:
 - (i) a prescribed professional disciplinary body; or
 - (ii) a member of a prescribed professional disciplinary body; and
 - (b) protected Administrator information has been disclosed under subsection (2) or (3) to the body; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
- (a) the disclosure or use is with the consent of the Administrator; and
 - (b) the disclosure or use is for the purpose of:
 - (i) deciding whether or not to take disciplinary or other action; or
 - (ii) taking that action.

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Administrator may, by writing, impose conditions to be complied with in relation to protected Administrator information disclosed under subsection (2) or (3).
- (7) A person commits an offence if:
- (a) the person is subject to a condition under subsection (6); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (8) An instrument under subsection (6) is not a legislative instrument.

277 Disclosure to certain financial bodies

Scope

- (1) This section applies if the Administrator is satisfied that particular protected Administrator information will enable or assist a body corporate that:
- (a) either:
 - (i) conducts, or is involved in the supervision of, a financial market; or
 - (ii) is a body corporate that holds an Australian CS facility licence; and
 - (b) is specified in the regulations;

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to monitor compliance with, enforce, or perform functions or exercise powers under:

- (c) the *Corporations Act 2001*; or
- (d) the business law of a State or Territory; or
- (e) the business law of a foreign country; or
- (f) the operating rules (if any) of the body corporate.

Disclosure

- (2) The Administrator may disclose that protected Administrator information to the body corporate.
- (3) If any of the following individuals:
 - (a) a delegate of the Administrator;
 - (b) an individual assisting the Administrator under section 250;
 - (c) an individual whose services are made available to the Administrator under section 251;
 - (d) an individual engaged as a consultant under section 252;
 - (e) an individual who is an audit team leader;
 - (f) an individual assisting an audit team leader;is authorised by the Administrator, in writing, for the purposes of this section, the individual may disclose that protected Administrator information to the body corporate.

Secondary disclosure and use

- (4) A person commits an offence if:
 - (a) the person is:
 - (i) a body corporate; or
 - (ii) an officer, employee or agent of a body corporate; and
 - (b) protected Administrator information has been disclosed under subsection (2) or (3) to the body corporate; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
-

- (a) the disclosure or use is with the consent of the Administrator;
and
- (b) the disclosure or use is for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under:
 - (i) the *Corporations Act 2001*; or
 - (ii) the business law of a State or Territory; or
 - (iii) the business law of a foreign country; or
 - (iv) the operating rules (if any) of the body corporate.

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Administrator may, by writing, impose conditions to be complied with by the body corporate and its officers, employees and agents in relation to protected Administrator information disclosed to the body corporate under subsection (2) or (3).
- (7) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (6); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (8) An instrument under subsection (6) is not a legislative instrument.

Meaning of expressions

- (9) In this section, the following expressions have the same meanings as in the *Corporations Act 2001*:
 - (a) ***Australian CS facility licence***;
 - (b) ***financial market***;
 - (c) ***officer***;
 - (d) ***operating rules***.

Section 278

278 Disclosure with consent

An entrusted public official may disclose protected information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

279 Disclosure to reduce threat to life or health

An entrusted public official may disclose protected information if:

- (a) the entrusted public official believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of an individual; and
- (b) the disclosure is for the purposes of preventing or lessening that threat.

280 Disclosure of publicly available information

An entrusted public official may disclose protected information if it is already publicly available.

281 Disclosure of summaries or statistics

Any of the following persons:

- (a) the Administrator;
- (b) a delegate of the Administrator;
- (c) a person assisting the Administrator under section 250;
- (d) a person whose services are made available to the Administrator under section 251;
- (e) a person engaged as a consultant under section 252;
- (f) an audit team leader;
- (g) a person assisting an audit team leader;

may disclose:

- (h) summaries of protected Administrator information; or
- (i) statistics derived from protected Administrator information;

if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

**282 Disclosure for purposes of law enforcement—protected
Administrator information**

Scope

- (1) This section applies if the Administrator is satisfied that disclosure of particular protected Administrator information is reasonably necessary for:
- (a) the enforcement of the criminal law; or
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue.

Disclosure

- (2) The Administrator may disclose that protected Administrator information to:
- (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (b) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.
- (3) If any of the following individuals:
- (a) a delegate of the Administrator;
 - (b) an individual assisting the Administrator under section 250;
 - (c) an individual whose services are made available to the Administrator under section 251;
 - (d) an individual engaged as a consultant under section 252;
 - (e) an individual who is an audit team leader;
 - (f) an individual assisting an audit team leader;
- is authorised by the Administrator, in writing, for the purposes of this section, the individual may disclose that protected Administrator information to:
- (g) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (h) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

Section 282

Secondary disclosure and use

- (4) A person commits an offence if:
- (a) the person is, or has been, an employee or officer of:
 - (i) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (ii) an Australian police force; and
 - (b) protected Administrator information has been disclosed under subsection (2) or (3) to the Department, agency, authority or police force, as the case may be; and
 - (c) the person has obtained the information in the person's capacity as an employee or officer of the Department, agency, authority or police force, as the case may be; and
 - (d) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
- (a) the disclosure or use is with the consent of the Administrator; and
 - (b) the disclosure or use is for the purpose of:
 - (i) enforcing the criminal law; or
 - (ii) enforcing a law imposing a pecuniary penalty; or
 - (iii) protecting the public revenue.

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Administrator may, by writing, impose conditions to be complied with in relation to protected Administrator information disclosed under subsection (2) or (3).
- (7) A person commits an offence if:
- (a) the person is subject to a condition under subsection (6); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (8) An instrument under subsection (6) is not a legislative instrument.

283 Disclosure for purposes of law enforcement—protected DOIC information

Scope

- (1) This section applies if the Chair of the Domestic Offsets Integrity Committee is satisfied that disclosure of particular protected DOIC information is reasonably necessary for:
- (a) the enforcement of the criminal law; or
 - (b) the enforcement of a law imposing a pecuniary penalty; or
 - (c) the protection of the public revenue.

Disclosure

- (2) The Chair of the Domestic Offsets Integrity Committee may disclose that protected DOIC information to:
- (a) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (b) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.
- (3) If any of the following individuals:
- (a) a Domestic Offsets Integrity Committee member;
 - (b) an individual assisting the Domestic Offsets Integrity Committee under section 269;
- is authorised by the Chair of the Domestic Offsets Integrity Committee, in writing, for the purposes of this section, the individual may disclose that protected DOIC information to:
- (c) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (d) an Australian police force;
- whose functions include that enforcement or protection, for the purposes of that enforcement or protection.

Section 283

Secondary disclosure and use

- (4) A person commits an offence if:
- (a) the person is, or has been, an employee or officer of:
 - (i) a Department, agency or authority of the Commonwealth, a State or a Territory; or
 - (ii) an Australian police force; and
 - (b) protected DOIC information has been disclosed under subsection (2) or (3) to the Department, agency, authority or police force, as the case may be; and
 - (c) the person has obtained the information in the person's capacity as an employee or officer of the Department, agency, authority or police force, as the case may be; and
 - (d) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (5) Subsection (4) does not apply if:
- (a) the disclosure or use is with the consent of the Chair of the Domestic Offsets Integrity Committee; and
 - (b) the disclosure or use is for the purpose of:
 - (i) enforcing the criminal law; or
 - (ii) enforcing a law imposing a pecuniary penalty; or
 - (iii) protecting the public revenue.

Note: A defendant bears an evidential burden in relation to a matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Conditions

- (6) The Chair of the Domestic Offsets Integrity Committee may, by writing, impose conditions to be complied with in relation to protected DOIC information disclosed under subsection (2) or (3).
- (7) A person commits an offence if:
- (a) the person is subject to a condition under subsection (6); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (8) An instrument under subsection (6) is not a legislative instrument.

284 Disclosure for purposes of review of Act

An entrusted public official may disclose protected information to a person if:

- (a) the person is conducting a review under section 306; and
- (b) the disclosure is for the purposes of that review.

285 Disclosure for purposes of review of compliance with Australia’s international obligations

- (1) The Administrator may disclose protected Administrator information to another person for the purpose of facilitating a review of Australia’s compliance with its international obligations relating to reporting of greenhouse gas emissions.
- (2) In this section:

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

Part 28—Miscellaneous

286 Miscellaneous functions of the Administrator

The Administrator has the following functions:

- (a) to monitor compliance with this Act and the associated provisions;
- (b) to promote compliance with this Act and the associated provisions;
- (c) to conduct and/or co-ordinate education programs about this Act and the associated provisions;
- (d) to advise the Minister on matters relating to this Act and the associated provisions;
- (e) to advise and assist persons in relation to their obligations under this Act and the associated provisions;
- (f) to advise and assist prospective applicants in connection with ensuring that applications are in accordance with this Act;
- (g) to advise and assist the representatives of persons in relation to compliance by persons with this Act and the associated provisions;
- (h) to liaise with regulatory and other relevant bodies, whether in Australia or elsewhere, about co-operative arrangements for matters relating to this Act and the associated provisions;
- (i) to collect, analyse, interpret and disseminate statistical information relating to the operation of this Act and the associated provisions.

287 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.

288 Administrator's power to require further information

Applications

- (1) If:
 - (a) a person makes an application to the Administrator under this Act or the regulations; and
 - (b) the Administrator exercises a power, under another provision of this Act or the regulations, to require the applicant to give the Administrator further information in connection with the application;the Administrator:
 - (c) must ensure that the further information is relevant to the matter to which the application relates; and
 - (d) must ensure that the power is exercised in a reasonable way.

Requests

- (2) If:
 - (a) a person makes a request to the Administrator under this Act; and
 - (b) the Administrator exercises a power, under another provision of this Act, 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

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- (d) must ensure that the power is exercised in a reasonable way.

289 Domestic Offsets Integrity Committee's power to require further information

If:

- (a) a person makes an application to the Domestic Offsets Integrity Committee under this Act or the regulations; and
- (b) the Domestic Offsets Integrity Committee exercises a power, under another provision of this Act or the regulations, to require the applicant to give the Domestic Offsets Integrity Committee further information in connection with the application;

the Domestic Offsets Integrity Committee:

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

290 Actions may be taken by an agent of a project proponent

- (1) The principles of agency apply in relation to the taking, by a project proponent for an eligible offsets project, of any of the following actions under this Act or the regulations:
 - (a) making an application;
 - (b) giving information in connection with an application;
 - (c) withdrawing an application;
 - (d) giving a report;
 - (e) giving a notice (including an electronic notice);
 - (f) making a submission;
 - (g) making a request;
 - (h) giving information in connection with a request.
- (2) For example, the project proponent may authorise another person to be the project proponent's agent for the purposes of making an application under this Act or the regulations on the project proponent's behalf.

- (3) To avoid doubt, this section does not, by implication, limit the application of the principles of agency to other matters arising under this Act or the regulations.

291 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.

292 Delegation by a State Minister or a Territory Minister

- (1) A Minister of a State or Territory may, by writing, delegate any or all of his or her functions or powers under this Act to a person who:
- (a) is an officer or employee of the State or Territory, as the case may be; and
 - (b) holds or performs the duties of an office or position that is equivalent to a position occupied by an SES employee in the Australian Public Service.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister of the State or the Minister of the Territory, as the case may be.

293 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.

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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.

294 Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

295 Law relating to legal professional privilege not affected

This Act does not affect the law relating to legal professional privilege.

296 Arrangements with States and Territories

States

- (1) The Minister may make arrangements with a Minister of a State with respect to the administration of this Act, including:
- (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of that State; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of that State; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of that State.
- (2) The Minister may arrange with a Minister of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Australian Capital Territory

- (3) The Minister may make arrangements with a Minister of the Australian Capital Territory with respect to the administration of this Act, including:

- (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of the Australian Capital Territory; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of the Australian Capital Territory.
- (4) The Minister may arrange with a Minister of the Australian Capital Territory for the variation or revocation of an arrangement in force under subsection (3).

Northern Territory

- (5) The Minister may make arrangements with a Minister of the Northern Territory with respect to the administration of this Act, including:
- (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory; and
 - (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of the Northern Territory; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of the Northern Territory.
- (6) The Minister may arrange with a Minister of the Northern Territory for the variation or revocation of an arrangement in force under subsection (5).

Norfolk Island

- (7) The Minister may make arrangements with a Minister of Norfolk Island with respect to the administration of this Act, including:
- (a) arrangements for the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island; and

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- (b) arrangements for the exercise of the powers conferred by section 39 on relevant land registration officials of Norfolk Island; and
 - (c) arrangements for the exercise of the powers conferred by section 40 on relevant land registration officials of Norfolk Island.
- (8) The Minister may arrange with a Minister of Norfolk Island for the variation or revocation of an arrangement in force under subsection (7).

Gazettal

- (9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the *Gazette*.

Instrument is not a legislative instrument

- (10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

297 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;
- (g) an audit team leader;
- (h) a Domestic Offsets Integrity Committee member;

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:

- (i) in the performance or purported performance of any function;
or
- (j) in the exercise or purported exercise of any power;
conferred by this Act or the associated provisions.

298 Executive power of the Commonwealth

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

299 Notional payments by the Commonwealth

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

300 Compensation for acquisition of property

- (1) If the operation of this Act or the regulations would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

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

301 Native title rights not affected

This Act does not affect the operation of the *Native Title Act 1993*.

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302 Racial Discrimination Act not affected

This Act does not affect the operation of the *Racial Discrimination Act 1975*.

303 Additional effect of this Act and the regulations—introduced animal emissions avoidance projects

- (1) Without limiting their effect apart from this section, this Act and the regulations also have effect as provided by this section.
- (2) This Act and the regulations also have the effect they would have if each reference in this Act and the regulations to an introduced animal emissions avoidance project were, by express provision, confined to an introduced animal emissions avoidance project that:
 - (a) contributes; or
 - (b) is likely to contribute;to the fulfilment of Australia's obligations under paragraph (h) of Article 8 of the Biodiversity Convention.

304 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.

305 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.

306 Reviews of operation of this Act etc.

- (1) The Minister must cause to be conducted reviews of the operation of:
 - (a) this Act; and
 - (b) the regulations; and
 - (c) other instruments made under this Act.

Public consultation

- (2) A review under subsection (1) must make provision for public consultation.

Report

- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

First review

- (5) The report of the first review under subsection (1) must be tabled under subsection (4) before the end of 31 December 2014.

Subsequent reviews

- (6) The report of each subsequent review under subsection (1) must be tabled under subsection (4) within 3 years after the report of the previous review was tabled under subsection (4).

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307 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]*

(51/11)

Carbon Credits (Carbon Farming Initiative) Act 2011 *No. 101, 2011* 307