



Clean Energy Regulator Act 2011

No. 163, 2011

**An Act to establish the Clean Energy Regulator,
and for other purposes**

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

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Clean Energy Regulator Act 2011

No. 163, 2011

An Act to establish the Clean Energy Regulator, and for other purposes

[Assented to 4 December 2011]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Clean Energy Regulator Act 2011*.

Section 2

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.	4 December 2011
2. Sections 3 to 57	At the same time as section 3 of the <i>Clean Energy Act 2011</i> commences.	2 April 2012

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Simplified outline

The following is a simplified outline of this Act:

- This Act establishes the Clean Energy Regulator.
- The Regulator has such functions as are conferred on it by or under:
 - (a) the *Clean Energy Act 2011*; and
 - (b) the *Carbon Credits (Carbon Farming Initiative) Act 2011*; and

- (c) the *National Greenhouse and Energy Reporting Act 2007*; and
- (d) the *Renewable Energy (Electricity) Act 2000*; and
- (e) the *Australian National Registry of Emissions Units Act 2011*.

4 Definitions

In this Act:

Australian police force means:

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

climate change law means any of the following:

- (a) this Act or legislative instruments under this Act;
- (b) the *Clean Energy Act 2011* or legislative instruments under that Act;
- (c) the *Clean Energy (Charges—Excise) Act 2011* or legislative instruments under that Act;
- (d) the *Clean Energy (Charges—Customs) Act 2011* or legislative instruments under that Act;
- (e) the *Clean Energy (Unit Issue Charge—Auctions) Act 2011* or legislative instruments under that Act; and
- (f) the *Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011*; and
- (g) the *Clean Energy (Unit Shortfall Charge—General) Act 2011* or legislative instruments under that Act; and
- (h) the *Clean Energy (International Unit Surrender Charge) Act 2011* or legislative instruments under that Act; and
- (i) the *Carbon Credits (Carbon Farming Initiative) Act 2011* or legislative instruments under that Act;
- (j) the *National Greenhouse and Energy Reporting Act 2007* or legislative instruments under that Act;
- (k) the *Renewable Energy (Electricity) Act 2000* or legislative instruments under that Act;

Section 4

- (l) the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*;
- (m) the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*;
- (n) the *Australian National Registry of Emissions Units Act 2011* or legislative instruments under that Act.

engage in conduct means:

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

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.

international agreement has the same meaning as in the *Clean Energy Act 2011*.

international climate change agreement has the same meaning as in the *Clean Energy Act 2011*.

international climate change body means:

- (a) a body established under an international climate change agreement; or
- (b) a body established by a body mentioned in paragraph (a).

Joint Petroleum Development Area has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

member of the Regulator includes the Chair of the Regulator.

methodology determination has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

objectives of the Regulator includes:

- (a) the specific objectives of the Regulator in relation to the *Clean Energy Act 2011* or legislative instruments under that Act; and
- (b) the specific objectives of the Regulator in relation to the *Carbon Credits (Carbon Farming Initiative) Act 2011* or legislative instruments under that Act; and
- (c) the specific objectives of the Regulator in relation to the *National Greenhouse and Energy Reporting Act 2007* or legislative instruments under that Act; and
- (d) the specific objectives of the Regulator in relation to the *Renewable Energy (Electricity) Act 2000* or legislative instruments under that Act; and
- (e) the specific objectives of the Regulator in relation to the *Australian National Registry of Emissions Units Act 2011* or legislative instruments under that Act.

official of the Regulator means:

- (a) a member of the Regulator; or
- (b) a member of the staff of the Regulator; or
- (c) a person whose services are made available to the Regulator under section 37; or
- (d) a person engaged as a consultant under section 38.

offsets project has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

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

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

protected information means information that:

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

Regulator means the Clean Energy Regulator.

Section 5

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

Secretary means the Secretary of the Department.

staff of the Regulator means the staff described in section 36.

State/Territory government body means:

- (a) the government of a State or Territory; or
- (b) an agency or authority of a State or Territory.

United Nations Convention on the Law of the Sea means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

Note: The text of the Convention is set out in Australian Treaty Series 1994 No. 31 ([1994] ATS 31). 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).

vacancy, in relation to the office of a member of the Regulator, has a meaning affected by section 5.

5 Vacancy in the office of a member of the Regulator

For the purposes of a reference in:

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

there are taken to be 4 offices of members of the Regulator in addition to the Chair of the Regulator.

6 Crown to be bound

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

7 Extension to external Territories

This Act extends to every external Territory.

8 Extension to exclusive economic zone and continental shelf

This Act extends to a matter relating to the exercise of Australia's sovereign rights in the exclusive economic zone or the continental shelf.

9 Extension to Joint Petroleum Development Area

This Act extends to the Joint Petroleum Development Area.

10 Application to foreign ships

This Act does not apply to the extent that its application would be inconsistent with the exercise of rights of foreign ships in:

- (a) the territorial sea; or
- (b) the exclusive economic zone; or
- (c) waters of the continental shelf;

in accordance with the United Nations Convention on the Law of the Sea.

Part 2 Clean Energy Regulator

Division 1 Regulator's establishment, functions, powers and liabilities

Section 11

Part 2—Clean Energy Regulator

Division 1—Regulator's establishment, functions, powers and liabilities

11 Clean Energy Regulator

The Clean Energy Regulator is established by this section.

Note: In this Act, *Regulator* means the Clean Energy Regulator—see section 4.

12 Functions of the Regulator

The Regulator has the following functions:

- (a) such functions as are conferred on the Regulator by a climate change law;
- (b) such functions as are conferred on the Regulator by any other law of the Commonwealth;
- (c) to do anything incidental to or conducive to the performance of any of the above functions.

13 Powers of the Regulator

- (1) The Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Regulator include, but are not limited to, the power to enter into contracts.
- (3) Any contract entered into by the Regulator is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by the Regulator is held for and on behalf of the Commonwealth.
- (5) Any money received by the Regulator is received for and on behalf of the Commonwealth.

- (6) The Regulator cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

Note: The Commonwealth may hold real or personal property or money on trust.

- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

14 Regulator's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Regulator are taken to be liabilities of the Commonwealth.
- (2) In this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

15 Regulator has privileges and immunities of the Crown

The Regulator has the privileges and immunities of the Crown in right of the Commonwealth.

Division 2—Constitution and membership of the Regulator

16 Constitution of the Regulator

- (1) The Regulator:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (2) The seal of the Regulator is to be kept in such custody as the Regulator directs and must not be used except as authorised by the Regulator.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Regulator appearing on a document; and
 - (b) presume that the document was duly sealed.

17 Membership of the Regulator

The Regulator consists of the following members:

- (a) a Chair;
- (b) at least 2, and not more than 4, other members.

18 Appointment of members of the Regulator

- (1) Each member of the Regulator is to be appointed by the Minister by written instrument.

Note: The member of the Regulator is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment as a member of the Regulator unless the Minister is satisfied that the person has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;

in at least one of the following fields:

- (c) economics;
 - (d) industry;
 - (e) energy production and supply;
 - (f) energy measurement and reporting;
 - (g) greenhouse gas emissions measurement and reporting;
 - (h) greenhouse gas abatement measures;
 - (i) financial markets;
 - (j) trading of environmental instruments;
 - (k) land resource management;
 - (l) public administration.
- (3) The Chair of the Regulator holds office on a full-time basis.
- (4) A member of the Regulator (other than the Chair) may hold office on either a full-time or a part-time basis.

19 Period of appointment for members of the Regulator

A member of the Regulator holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

20 Acting members of the Regulator

Acting Chair of the Regulator

- (1) The Minister may appoint a person to act as the Chair of the Regulator:
- (a) during a vacancy in the office of the Chair of the Regulator (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 Regulator:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Part 2 Clean Energy Regulator

Division 2 Constitution and membership of the Regulator

Section 20

Acting member of the Regulator (other than the Chair of the Regulator)

- (2) The Minister may appoint a person to act as a member of the Regulator (other than the Chair of the Regulator):
- (a) during a vacancy in the office of a member of the Regulator (other than the Chair of the Regulator), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a member of the Regulator (other than the Chair of the Regulator):
 - (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 Regulator; or
 - (b) a member of the Regulator (other than the Chair of the Regulator);
- unless the person is eligible for appointment as a member of the Regulator.

Note 1: See subsection 18(2).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Division 3—Terms and conditions for members of the Regulator

21 Remuneration

- (1) A member of the Regulator 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, a member of the Regulator is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Regulator is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

22 Disclosure of interests to the Minister

A member of the Regulator 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.

23 Disclosure of interests to the Regulator

- (1) A member of the Regulator who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Regulator must disclose the nature of the interest to a meeting of the Regulator.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the member of the Regulator.
- (3) The disclosure must be recorded in the minutes of the meeting of the Regulator.
- (4) Unless the Regulator otherwise determines, the member of the Regulator:

Part 2 Clean Energy Regulator

Division 3 Terms and conditions for members of the Regulator

Section 24

- (a) must not be present during any deliberation by the Regulator on the matter; and
 - (b) must not take part in any decision of the Regulator with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member of the Regulator:
- (a) must not be present during any deliberation of the Regulator 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 Regulator.

24 Outside employment

- (1) A full-time member of the Regulator must not engage in paid employment outside the duties of his or her office without the Minister's approval.
- (2) A part-time member of the Regulator must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

25 Leave of absence

- (1) A full-time member of the Regulator has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant leave of absence, other than recreation leave, to a full-time member of the Regulator on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chair of the Regulator may grant leave of absence to a part-time member of the Regulator on the terms and conditions that the Chair determines.

26 Resignation

- (1) A member of the Regulator 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.

27 Termination of appointment

- (1) The Minister may terminate the appointment of a member of the Regulator for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member of the Regulator 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 his or her remuneration for the benefit of his or her creditors; or
 - (b) if the member is a full-time member—the member engages, except with the Minister’s approval, in paid employment outside the duties of his or her office (see section 24); or
 - (c) if the member is a part-time member—the member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 24); or
 - (d) the member fails, without reasonable excuse, to comply with section 22 or 23; or
 - (e) the member is absent, except on leave of absence, from 3 consecutive meetings of the Regulator.

28 Other terms and conditions

A member of the Regulator holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 4—Decision-making by the Regulator

29 Holding of meetings

- (1) The Regulator is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair of the Regulator may convene a meeting at any time.

30 Presiding at meetings

- (1) The Chair of the Regulator presides at all meetings at which he or she is present.
- (2) If the Chair of the Regulator is not present at a meeting, the members of the Regulator present must appoint one of themselves to preside.

31 Quorum

At a meeting of the Regulator, 2 members of the Regulator constitute a quorum.

32 Voting at meetings etc.

- (1) At a meeting of the Regulator, a question is decided by a majority of the votes of members of the Regulator present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

33 Conduct of meetings

The Regulator may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

34 Minutes

The Regulator must keep minutes of its meetings.

Division 5—Delegation

35 Delegation by the Regulator

- (1) The Regulator may, by writing, delegate any or all of its functions and powers to:
 - (a) a member of the Regulator; or
 - (b) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an SES employee or acting SES employee; or
 - (c) a person who is:
 - (i) a member of the staff of the Regulator; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position; or
 - (d) a person who is:
 - (i) a person assisting the Regulator under section 37; and
 - (ii) an SES employee or acting SES employee in the Department; or
 - (e) a person who is:
 - (i) a person assisting the Regulator under section 37; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent position, in the Department.
- Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.
- (2) A delegate must comply with any written directions of the Regulator.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

Division 6—Staff of the Regulator etc.

36 Staff

- (1) The staff of the Regulator are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chair of the Regulator and the staff of the Regulator together constitute a Statutory Agency; and
 - (b) the Chair of the Regulator is the Head of that Statutory Agency.

37 Persons assisting the Regulator

The Regulator may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); 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 Regulator in connection with the performance of any of its functions.

38 Consultants

- (1) The Regulator may engage persons having suitable qualifications and experience as consultants to the Regulator.
- (2) The consultants are to be engaged on the terms and conditions that the Regulator determines in writing.

Division 7—Planning and reporting obligations

39 Corporate plan

- (1) The Regulator must prepare a corporate plan at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
 - (a) the objectives of the Regulator;
 - (b) the strategies and policies that are to be followed by the Regulator in order to achieve those objectives;
 - (c) such other matters (if any) as the Minister requires.
- (4) The Chair of the Regulator must keep the Minister informed about:
 - (a) changes to the plan; and
 - (b) matters that might significantly affect the achievement of the objectives set out in the plan.
- (5) The Minister may give the Chair of the Regulator written guidelines that are to be used by the Chair in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).
- (6) A guideline given under subsection (5) is not a legislative instrument.
- (7) The Regulator must ensure that the first corporate plan is prepared within 12 months after the commencement of this section.

40 Annual report

- (1) The Regulator must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) A report under subsection (1) for a financial year must set out:

- (a) a description of the objectives of the Regulator; and
 - (b) an assessment of the extent to which the Regulator's operations during that year have achieved those objectives.
- (3) An assessment under paragraph (2)(b) must be made against performance indicators set out in the report.
- (4) A report under subsection (1) is in addition to a report under section 105 of the *Renewable Energy (Electricity) Act 2000*.
- (5) If a report under section 105 of the *Renewable Energy (Electricity) Act 2000* relating to a calendar year (the **REE report**) has been presented to the Parliament, the report under subsection (1) of this section for the financial year ending on 30 June after the end of the calendar year:
 - (a) need not deal comprehensively with the working of that Act during so much of the financial year as overlaps the calendar year; and
 - (b) must include a summary of the REE report, to the extent to which the REE report deals with the working of the *Renewable Energy (Electricity) Act 2000* during so much of the financial year as overlaps the calendar year.
- (6) If this section does not commence at the start of a financial year, the period:
 - (a) beginning at the commencement of this section; and
 - (b) ending at the end of 30 June after that commencement;is taken, for the purposes of this section, to be a financial year.

Division 8—Other matters

41 Minister may give directions to the Regulator

- (1) The Minister may, by legislative instrument, give directions to the Regulator in relation to the performance of its functions and the exercise of its powers.

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) A direction under subsection (1) must not be inconsistent with the objects of:
 - (a) the *Clean Energy Act 2011*; or
 - (b) the *Carbon Credits (Carbon Farming Initiative) Act 2011*; or
 - (c) the *National Greenhouse and Energy Reporting Act 2007*; or
 - (d) the *Renewable Energy (Electricity) Act 2000*.
- (4) The Regulator must comply with a direction under subsection (1).

42 Chair of the Regulator not subject to direction by the Regulator on certain matters

To avoid doubt, the Chair of the Regulator is not subject to direction by the Regulator in relation to the Chair's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
- (b) the *Public Service Act 1999*;

in relation to the Regulator.

Part 3—Secrecy

43 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Regulator; and
 - (b) the person has obtained protected information in the person's capacity as an official of the Regulator; 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 a climate change law, an official of the Regulator 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.

Section 44

44 Disclosure or use for the purposes of a climate change law etc.

An official of the Regulator may disclose or use protected information if:

- (a) the disclosure or use is for the purposes of a climate change law; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Regulator under a climate change law; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Regulator.

45 Disclosure to Ministers etc.

- (1) An official of the Regulator may disclose protected information to the Minister.
- (2) An official of the Regulator may disclose protected information to a Minister if the Minister is responsible for administering a program, or collecting statistics, relating to:
 - (a) greenhouse gas emissions (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*); or
 - (b) energy consumption (within the meaning of that Act); or
 - (c) energy production (within the meaning of that Act).
- (3) An official of the Regulator may disclose protected information to a person employed, under section 13 or 20 of the *Members of Parliament (Staff) Act 1984*, as a member of staff of a Minister referred to in subsection (1) or (2).

46 Disclosure to Secretaries etc.

- (1) An official of the Regulator 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 subsection;if the disclosure is for the purposes of:
 - (c) advising the Minister; or

- (d) facilitating the monitoring of Australia's compliance with its international obligations under an international climate change agreement; or
 - (e) facilitating the development of an international agreement that relates to climate change.
- (2) If a Minister is responsible for administering a program, or collecting statistics, relating to:
- (a) greenhouse gas emissions (within the meaning of the *National Greenhouse and Energy Reporting Act 2007*); or
 - (b) energy consumption (within the meaning of that Act); or
 - (c) energy production (within the meaning of that Act);
- an official of the Regulator may disclose protected information to:
- (d) the Secretary of the Department administered by that Minister; or
 - (e) an officer of that Department who is authorised by that Secretary, in writing, for the purposes of this subsection;
- if the disclosure is for the purposes of:
- (f) advising that Minister; or
 - (g) administering that program, or collecting those statistics, as the case may be.

47 Disclosure or use for purposes of development of methodology determinations etc.

- (1) The Regulator may disclose or use protected information that relates to a particular offsets project if:
- (a) under section 27 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the Regulator 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 of that Act 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

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- (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 Regulator may disclose or use protected information if:
 - (a) the information was:
 - (i) contained in an application under section 108 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* for endorsement of a specified proposal for a methodology determination; or
 - (ii) contained in an application under section 116 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* 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*).

48 Disclosure to a Royal Commission

- (1) An official of the Regulator may disclose protected information to a Royal Commission.
- (2) The Chair of the Regulator may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (1).
- (3) An instrument under subsection (2) is not a legislative instrument.

49 Disclosure to certain agencies, bodies and persons

Scope

- (1) This section applies if the Chair of the Regulator is satisfied that particular protected information will enable or assist any of the following agencies, bodies or persons:
- (a) the Australian Bureau of Statistics;
 - (b) the Australian Communications and Media Authority;
 - (c) the Australian Competition and Consumer Commission;
 - (d) the Australian Prudential Regulation Authority;
 - (e) the Australian Securities and Investments Commission;
 - (f) the National Competition Council;
 - (g) the Productivity Commission;
 - (h) the Australian Energy Regulator;
 - (i) the Australian Statistician;
 - (j) the Commissioner of Taxation;
 - (k) the Australian Competition Tribunal;
 - (l) the Director of Public Prosecutions;
 - (m) the Australian Transaction Reports and Analysis Centre;
 - (n) the Reserve Bank of Australia;
 - (o) Australian Energy Market Operator Limited (ACN 072 010 327);
 - (p) the Australian Energy Market Commission established under the *Australian Energy Market Commission Establishment Act 2004* of South Australia;
 - (q) the Independent Market Operator established under the *Electricity Industry (Independent Market Operator) Regulations 2004* of Western Australia;
 - (r) Low Carbon Australia Limited (ACN 141 478 748);
 - (s) the Climate Change Authority;
 - (t) the Land Sector Carbon and Biodiversity Board;
 - (ta) the Energy Security Council;
 - (u) the Chief Executive Officer of Customs;
 - (v) a State/Territory government body whose functions include a function that corresponds to a function of the Regulator;

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- (w) a prescribed State/Territory government body;
 - (x) a prescribed international climate change body;
 - (y) a prescribed professional disciplinary body;
 - (z) a person or body responsible for the administration of a scheme that involves the issue or registration of:
 - (i) prescribed eligible carbon units; or
 - (ii) prescribed international units;
- to perform or exercise any of the functions or powers of the agency, body or person.

Disclosure

- (2) If an official of the Regulator is authorised by the Chair of the Regulator, in writing, for the purposes of this section, the official may disclose that protected information to the agency, body or person concerned.
- (3) The Chair of the Regulator may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2).
- (4) A person commits an offence if:
 - (a) the person is subject to a condition under subsection (3); 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.

- (5) An instrument under subsection (3) is not a legislative instrument.

Prescribed professional disciplinary bodies

- (6) 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 information has been disclosed under subsection (2) 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.

Exceptions

- (7) Subsection (6) does not apply if:
 - (a) the disclosure or use is with the consent of the Chair of the Regulator; 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 (7) (see subsection 13.3(3) of the *Criminal Code*).

50 Disclosure to certain financial bodies

Scope

- (1) This section applies if the Chair of the Regulator is satisfied that particular protected 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;
 - 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.

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Disclosure

- (2) If an official of the Regulator is authorised by the Chair of the Regulator, in writing, for the purposes of this section, the official may disclose that protected information to the body corporate.

Conditions

- (3) The Chair of the Regulator may, by writing, impose conditions to be complied with by the body corporate and its officers, employees and agents in relation to protected information disclosed to the body corporate under subsection (2).
- (4) A person commits an offence if:
- (a) the person is subject to a condition under subsection (3); 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.

- (5) An instrument under subsection (3) is not a legislative instrument.

Secondary disclosure and use

- (6) 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 information has been disclosed under subsection (2) 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.

Exceptions

- (7) Each of the following is an exception to the prohibition in subsection (6):

- (a) the disclosure or use is with the consent of the Chair of the Regulator;
- (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 (7) (see subsection 13.3(3) of the *Criminal Code*).

Meaning of expressions

- (8) 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***.

51 Disclosure with consent

An official of the Regulator 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.

52 Disclosure to reduce threat to life or health

An official of the Regulator may disclose protected information if:

- (a) the 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.

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53 Disclosure of publicly available information

An official of the Regulator may disclose protected information if it has already been lawfully made available to the public.

54 Disclosure of summaries or statistics

An official of the Regulator may disclose:

- (a) summaries of protected information; or
- (b) statistics derived from protected information;

if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

55 Disclosure for purposes of law enforcement

Scope

- (1) This section applies if the Chair of the Regulator is satisfied that disclosure of particular protected 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 Regulator may disclose that protected 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 an official of the Regulator is authorised by the Chair of the Regulator, in writing, for the purposes of this section, the official may disclose that protected 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.

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 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 Regulator; 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 Regulator may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (2) or (3).
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- (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.

56 Delegation

- (1) The Chair of the Regulator may, by writing, delegate any or all of his or her functions and powers under this Part to a member of the Regulator.
- (2) A delegate must comply with any written directions of the Chair of the Regulator.

Part 4—Miscellaneous

57 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 13 September 2011
Senate on 12 October 2011]*